STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2011-187273
Lower Court Case No. 2007-CP-40-4259

DUSHUN STATEN, #282328,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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Q OKAY. DID YOU STAY THERE YOURSELF?
A NO, SIR, I WENT HOME.
Q OKAY. DID YOU RENT THE ROOM THERE YOURSELF?
A YES, SIR.
Q OKAY. WHO ENDED UP STAYING THERE?
A MY BROTHER.
Q WHAT HAPPENED WITH SHAKEEM?
A HE WENT HOME WITH US.
Q SO HE WENT HOME WITH YOU AND TALIA?
A YES, SIR.
Q BY HOME, YOU MEAN BACK TO ZIMALCREST?
A YES, SIR.
Q OKAY. NOW, IN THIS EVIDENCE THERE IS -- WELL, FIRST LET ME ASK YOU THIS, DID YOU -- DID YOU TAKE THE GALANT AND DITCH IT OFF A ROAD OFF OF FARMING CREEK ROAD---
A NO, SIR.
Q NO?
A NO, SIR.
Q NO. OKAY. DID YOU TAKE IT THERE THAT NIGHT AND DITCH IT THERE THAT NIGHT?
A NO, SIR.
Q DID YOU TAKE IT THERE THE NEXT DAY AND DITCH IT THERE THE NEXT DAY?
A NO, SIR.
Q DID YOU EVER HAVE CONTACT WITH THE GALANT AFTER YOU

SAW IT IN THE PARKING LOT AT BENEDICT?

A NO, SIR.

Q DID YOU HAVE OCCASION TO MAKE A REPORT THAT THE GALANT WAS STOLEN?

A YES, I DID.

Q OKAY. DO YOU REMEMBER WHEN YOU MADE THAT REPORT?

A NOT EXACTLY.

Q DO YOU REMEMBER WHEN YOU TOLD THE OFFICERS -- REMEMBER TALKING TO THE OFFICERS ABOUT IT?

A YES, I DO.

Q DO YOU REMEMBER WHEN YOU TOLD THEM IT WAS STOLEN?

A NO.

Q DO YOU REMEMBER WHAT TIME YOU TOLD THEM IT WAS STOLEN? DO YOU REMEMBER WHAT DATE YOU TOLD THEM IT WAS STOLEN?

A NO, THE FIRST TIME I CALLED IT WAS EARLY AFTERNOON. ONE OFFICER CAME BY AND THEN THE FOLLOWING DAY, TWO OFFICERS CAME BY.

Q OKAY.

A ONE FROM THE CITY POLICE AND ONE FROM THE SHERIFF.

Q THERE'S BEEN TESTIMONY THAT YOU REPORTED THE CAR STOLEN -- YOU REPORTED THAT THE CAR WAS STOLEN ON THE 15TH AT 7:00 IN THE EVENING WHICH WOULD BE BEFORE THE INCIDENT AT BENEDICT.

A YES, SIR.

Q DO YOU DENY MAKING THAT REPORT?
A NO, I DON'T.
Q CAN YOU TELL US WHY YOU MADE THAT REPORT?
A THE CAR WASN'T SUPPOSED TO BE THERE TO BEGIN WITH ---
Q WASN'T SUPPOSED TO BE WHERE TO BEGIN WITH?
A ON CAMPUS. IT WAS SUPPOSED TO BE PARKED.
Q WHY IS THAT?
A HE WAS TO DRIVE IT TO AND FROM WORK.
Q OKAY. WHY DID YOU CHOOSE A TIME PRIOR TO THE INCIDENT HAPPENING?
A BECAUSE I KNEW THE CAR WAS THERE.
Q WHAT WAS YOUR STATUS AS FAR AS LIVING AT THE ADDRESS ON ZIMALCREST? WERE YOU IN GOOD STANDING WITH THE FOLKS AS FAR AS THE RENT THERE?
A NO.
Q WERE YOU PLANNING ON DOING ANYTHING ELSE?
A YES, SIR.
Q OKAY. ON THE 17TH, A COUPLE OF DAYS AFTER THIS INCIDENT, DID YOU HAVE OCCASION TO GO TO A PLACE CALLED RENT MART?
A YES, SIR.
Q WHAT DID YOU GO THERE TO DO?
A RENT MART IS A BUSINESS NOT TOO FAR FROM THE CAMPUS OF USC AND THEY PROVIDE YOU WITH VACANCIES THROUGHOUT THE

COLUMBIA METROPOLITAN AREA, IF YOU ARE SEEKING A PLACE TO LIVE.

Q OKAY. DO YOU PAY THEM A FEE FOR THAT INFORMATION?

A IT'S $67.00 FOR THE PRINTOUT WHICH IS FIVE TO TEN PAGES DEPENDING ON THE PRICE RANGE YOU'RE WILLING TO SPEND AND AN ADDITIONAL $3.00 FOR A MAP SO THAT YOU WILL HAVE NO PROBLEM FINDING THE LOCATION OF THE HOUSES.

Q AND YOU SPECIFY AREAS THAT YOU'RE INTERESTED IN LOOKING AT?

A THE IRMO/SHALIDON (PHONETICALLY)/PINEY GROVE AREA.

Q OKAY. SO DID YOU BUY A MAP---

A YES, SIR.

Q ---JANUARY 17TH? OKAY. NOW, BETWEEN THE NIGHT OF THE 15TH OR EARLY MORNING OF THE 17TH, WHENEVER Y'ALL GOT BACK TO ZIMALCREST, AND THE 23RD, WHEN YOU WERE ARRESTED ---

A YES, SIR.

Q WHERE WERE YOU LIVING?

A AT ZIMALCREST.

Q ZIMALCREST?

A YES, SIR.

Q WERE YOU PLANNING ON LEAVING TOWN?

A NO, SIR.

Q REMEMBER THE EVENTS OF JANUARY THE 23RD?

A YES, SIR.

Q IF YOU CAN, PLEASE TELL US WHAT HAPPENED JANUARY THE 23RD?

A APPROXIMATELY 6:57 A.M., I NOT ONLY HEARD THE BANG BUT FELT THE VIBRATIONS THROUGH MY BEDROOM WINDOW.

Q OKAY.

A I IMMEDIATELY GOT UP.

Q WHAT WERE YOU WEARING AT THAT POINT IN TIME?

A UNDERWEARS AND A T-SHIRT.

Q OKAY. GO AHEAD.

A I PROCEEDED TO WALK INTO THE LIVING ROOM. BY THE TIME I GOT INTO THE LIVING ROOM BEHIND THE COUCH, THERE WAS TWO MORE REPEATED BOOM, BOOM. MY BROTHER SAT UP ON THE COUCH, LOOKED AT ME. BY THE TIME I GOT TO THE CORNER OF THE COUCH, THE DOOR FLEW IN, FELL INTO THE TV AND ALL I SAW WAS GUNS AND FLASHLIGHTS.

Q AND THOSE WERE ASSOCIATED WITH POLICE OFFICERS COMING THROUGH THE DOOR?

A EVIDENTLY.

Q OKAY. WHAT HAPPENED AT THAT POINT IN TIME?

A THEY TOLD US TO FREEZE, DON'T MOVE. I'M STANDING THERE WITH MY HANDS LIKE THIS, "WHAT'S GOING ON, WHAT ARE Y'ALL DOING? WHAT ARE Y'ALL DOING?"

HE CAME IN -- AFTER THEY CUFFED MY BROTHER AND LAID HIM ON HIS STOMACH ON THE FLOOR, THEY CAME OVER THERE AND HANDCUFFED ME. SHAKEEM WAS BROUGHT OUT THE ROOM,

IMMEDIATELY HANDCUFFED. TALIA, WHO WASN'T DRESSED, CAME OUT COVERED IN A COMFORTER AND THEY SAT HER ON THE COUCH AND TOLD HER NOT TO MOVE, YOU KNOW.

AND I'M ASKING THEM, "WHAT'S THIS ABOUT?" HE SPECIFIED, "YOU KNOW EXACTLY WHAT IT'S ABOUT." I SAID, "I DON'T UNDERSTAND WHAT YOU'RE TALKING ABOUT. I JUST LEFT YOUR OFFICE YESTERDAY." "YEAH, I KNOW YOU DID. WHAT YOU LEFT MY OFFICE FOR? WHAT DID YOU COME FOR? HUH? WHAT DID YOU COME FOR? YOUR CAR, IS THAT WHAT YOU CAME FOR?"

AND THAT'S EXACTLY WHAT HE SAID TO ME.

Q THEN WHAT HAPPENED?

A I WASN'T DRESSED. THEY DUG THROUGH SOME OF THE BOXES, FOUND ME A PAIR OF JEANS.

Q WHY WERE YOUR -- WHY WAS THE CLOTHES IN THE BOXES?

A I WAS PROCEEDING TO MOVE.

Q OKAY. GO AHEAD. GOT YOU A PAIR OF JEANS?

A THREW THEM TO ME. I ASKED HIM COULD I USE THE RESTROOM, YOU KNOW. ONE OF THE OFFICERS IN UNIFORM LED ME TO THE BATHROOM, YOU KNOW, TOOK ONE OF THE CUFFS OFF, LET ME USE THE RESTROOM, THREW ME THE JEANS, GRAB A PAIR OF BOOTS OFF THE FLOOR, TOLD ME TO PUT THOSE ON.

AFTER I GOT DRESSED, I CAME BACK IN AND I GUESS, MY LINE OF QUESTIONING WASN'T SUITABLE TO THE OFFICERS, SO INVESTIGATOR MEAD HAD ME TO GO WAIT OUTSIDE IN THE CAR.

Q OKAY. YOU WERE TAKEN OUT TO A POLICE CAR?

A YES, SIR.
Q OKAY. HOW LONG DID YOU STAY OUT IN THE POLICE CAR, ROUGHLY. I MEAN YOU WEREN'T LOOKING AT A WATCH AT THIS POINT IN TIME?
A NO, SIR.
Q OKAY. WELL, ROUGHLY HOW LONG DID YOU STAY OUT AT THE CAR?
A ANYWHERE FROM FORTY-FIVE MINUTES TO AN HOUR.
Q OKAY. WHAT HAPPENED AT THAT POINT IN TIME?
A UH---
Q WAS ANYONE ELSE IN THE CAR WITH YOU AT THAT POINT ---
A JUST THE OFFICER.
Q JUST THE OFFICER? ALL RIGHT. GO AHEAD.
A MAYBE FORTY MINUTES INTO THE WAIT, I NOTICED TWO MORE OFFICERS ESCORTING MY BROTHER AND SHAKEEM OUT OF THE APARTMENT HANDCUFFED AND SLIGHTLY DRESSED.
Q OKAY. AND THEN WHAT HAPPENED THEN?
A THEY TOOK THEM DOWN THE STEPS AND PLACED THEM IN SOME OTHER VEHICLES TO THE RIGHT OF ME.
Q AND DID YOU EVENTUALLY LEAVE ZIMALCREST?
A YES, SIR.
Q AND WHERE DID Y'ALL GO?
A I GUESS WE WAS PROCEEDING TO GO THE PRECINCT---
Q OKAY.

A ---OR DOWNTOWN AS THEY WOULD CALL IT.
Q OKAY. AT THE TIME YOU GET DOWNTOWN TO THE CITY OF COLUMBIA POLICE DEPARTMENT, WHAT HAPPENED TO YOU THEN?
A I WAS IMMEDIATELY PLACED IN A ROOM AND CUFFED TO THE CHAIR.
Q OKAY. ONE OF THE HANDCUFFS WAS CUFFED TO THE CHAIR?
A YES, SIR.
Q OKAY. DID YOU HAVE OCCASION TO SPEAK WITH INVESTIGATOR MEAD WHO'S TESTIFIED HERE EARLIER?
A YES, SIR. BUT HE WASN'T THERE WHEN I ARRIVED AT THE STATION.
Q OKAY. ROUGHLY HOW LONG WERE YOU AT THE -- THAT LOCATION HANDCUFFED TO THE CHAIR BEFORE YOU HAD AN OPPORTUNITY TO SPEAK WITH INVESTIGATOR MEAD?
A ANYWHERE FROM AN HOUR TO TWO HOURS.
Q AND DID YOU EVENTUALLY SPEAK WITH INVESTIGATOR MEAD?
A YES, SIR.
Q AND HE READ YOU YOUR RIGHTS?
A YES, SIR.
Q AND YOU SIGNED A WAIVER OF RIGHTS?
A YES, SIR.
Q AND YOU SPOKE WITH INVESTIGATOR MEAD?
A YES, SIR.
Q CAN YOU CHARACTERIZE FOR US WHAT TYPE OF CONVERSATION IT WAS THAT YOU HAD WITH MR. MEAD? PLEASANT,

UNPLEASANT?

A BACK AND FORTH.

Q BACK AND FORTH?

A YES, SIR.

Q OKAY. DID YOU GET UPSET DURING THE CONVERSATION?

A SEVERAL TIMES.

Q I CAN'T...

A YES, SIR.

Q DID YOU BEGIN BY DENYING THAT YOU HAD BEEN AT BENEDICT AT THE TIME OF THE INCIDENT?

A YES, I DID.

Q WHY DID YOU DO THAT?

A I WAS AFRAID.

Q WHAT DO YOU MEAN AFRAID?

A I WAS AFRAID OF BEING TRAPPED OFF.

Q OKAY. HE TOLD YOU ABOUT WITNESSES THAT COULD PUT YOU THERE?

A ONLY AFTER HE LEFT ME IN THE OFFICE ONCE OR TWICE.

Q OKAY. AND AFTER THAT, DID YOU GO AHEAD AND TELL HIM?

A YES, I DID.

Q OKAY. TRY TO TELL HIM WHAT YOU TOLD US?

A YES.

Q BY THE END OF THE CONVERSATION YOU HAD WITH -- WELL, LET ME ASK YOU THIS, DID YOU TELL HIM ABOUT BRANDON

McCANTS?

A YES, I DID.

Q DID YOU TELL HIM YOU DIDN'T SEE WHO DID THE SHOOTING?

A YES, I DID.

Q DID YOU TELL HIM YOU RAN FROM THE SCENE?

A YES, I DID.

Q DID YOU TELL HIM YOU CAUGHT A RIDE WITH SOMEONE?

A YES, I DID.

Q BY THE END OF THE CONVERSATION, WHAT WAS YOUR EMOTIONAL STATE AT THAT POINT IN TIME?

A I WAS BROKEN UP.

Q WHY?

A BECAUSE HE TOLD ME I WAS BEING ARRESTED FOR MURDER AND I KNOW THAT I DIDN'T COMMIT THAT CRIME.

Q DID HE OFFER YOU THE OPPORTUNITY TO GO AHEAD AND WRITE OUT A STATEMENT---

A YES, HE DID.

Q ---OR HAVE HIM WRITE OUT A STATEMENT?

A YES, HE DID.

Q DID YOU DECIDE YOU DIDN'T WANT TO?

A YES, I DID.

Q YOUR UNDERSTANDING IS THAT IF YOU DON'T WANT TO, YOU DON'T HAVE TO, UNDER THE CONSTITUTION; RIGHT?

A YES, SIR.

Q IN FACT, DID YOU MAKE A REMARK TO HIM AS TO WHY YOU DIDN'T WANT TO WRITE ONE OUT?
A YES, SIR.
Q AND WHAT WAS THAT?
A THAT MY WORDS WOULD BE TWISTED AND USED AGAINST ME.
Q THAT'S WHAT YOU WERE CONCERNED ABOUT?
A YES, SIR.
Q BUT YOU TALKED WITH HIM?
A YES, I DID.
Q TOLD HIM WHAT YOU COULD?
A YES, I DID.
(PAUSE.)
Q LUCIUS, ARE YOU A MEMBER OF THE BLOODS?
A NO, I'M NOT.
Q HAVE YOU EVER BEEN A MEMBER OF THE BLOODS?
A NO, I HAVEN'T.
Q DO YOU WEAR RED AND SHOW COLORS?
A NO, I DON'T.
Q DID YOU SHOOT PHILLIP LEE JANUARY 15TH, 2001---
MR. GASSER: YOUR HONOR, WE'VE BEEN OVER THIS---
THE COURT: YES, LET'S DON'T GO OVER IT AGAIN---
MR. GASSER: WE'VE BEEN OVER THIS---
THE COURT: THAT WAS YOUR FIRST QUESTION.
MR. GASSER: WE'VE STIPULATED HE DIDN'T SHOOT PHILLIP LEE. NO ONE EVER SAID HE SHOT PHILLIP LEE.

THE COURT: HIS OBJECTION IS ASKED AND ANSWERED.

MR. STRICKLER: YES, SIR.

Q YOU DIDN'T HAVE A THING TO DO WITH THE DEATH OF MR. LEE?

A NO, I DIDN'T.

Q CORRECT?

A THAT IS CORRECT.

(PAUSE.)

Q ANSWER ANY QUESTIONS THAT THESE FOLKS WANT TO ASK YOU. OKAY?

A YES, SIR.

THE COURT: ALL RIGHT, MR. TAYLOR.

MR. TAYLOR: THANK YOU VERY MUCH, YOUR HONOR.

CROSS-EXAMINATION BY MR. TAYLOR:

Q MR. STATEN, WHEN DID YOUR LITTLE BROTHER DUSHUN COME DOWN TO SOUTH CAROLINA?

A DECEMBER 24TH.

Q CHRISTMAS EVE?

A YES, SIR.

Q AND WHERE DID HE STAY?

A HE STAYED WITH ME A FEW DAYS AND WITH MY MOTHER.

Q OKAY. WHEN YOU WERE DESCRIBING THE INCIDENT THAT OCCURRED ON MONDAY NIGHT, THE 15TH OF JANUARY -- IF YOU WOULD COME DOWN HERE, PLEASE, SIR.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

Q I BELIEVE YOU SAID THAT DUSHUN WAS STANDING SOMEWHERE IN THIS AREA (INDICATING)?
A YES, SIR.
Q ALL RIGHT. AND -- AND THEN THIS IS AS YOU WERE MOVING AWAY FROM THE AREA (INDICATING)?
A YES, SIR.
Q OKAY. AND THESE FOLKS YOU SAY THAT WERE, WE'LL USE THE TERMINOLOGY, APPARENTLY WITH PHILLIP LEE, WERE AROUND IN THIS AREA (INDICATING), IN HERE?
A IF MR. LEE IS THE TEN---
Q RIGHT.
A ---THEY WERE ON EITHER SIDE OF HIM AND SURROUNDING THE BACK OF HIM LIKE A HALF A MOON, A CRESCENT.
Q ABOUT HOW MANY OF THEM WOULD YOU SAY?
A IT WAS FIFTEEN OR MORE PEOPLE OUT THERE.
Q ALL RIGHT. AND THESE TWO OTHER FELLOWS WITH -- DRESSED IN PREDOMINANTLY BLACK, ONE WITH A BLACK NORTHFACE, DID YOU SEE HIM?
A YES, SIR.
Q WHERE WAS HE -- AT THE TIME THAT DUSHUN WAS HERE AND YOU WERE LEAVING, WHERE WAS THE GUY IN THE BLACK NORTHFACE IN RELATIONSHIP TO NUMBERS ELEVEN AND TEN THERE?
A LIKE I STATED BEFORE, IF MR. LEE IS NUMBER TEN, THE ELEVEN AND SLIGHTLY ABOVE IT.
Q ALL RIGHT. AND SO THE TWO OF THOSE GUYS -- ONE OF

THEM HAD -- HAD ON A RACING JACKET OF SOME SORT? WAS IT BLACK AND RED?

A YES, WITH THE NAME KELLOGGS ON IT.

Q KELLOGGS?

A YES, SIR.

Q OKAY. AND AS THEY STOOD HERE, THOSE TWO FELLOWS, WERE THEY STANDING CLOSE TO EACH OTHER OR WERE THEY FARTHER -- FAR APART FROM EACH OTHER OR...

A THEY WERE CLOSE TOGETHER.

Q ABOUT HOW CLOSE?

A AS CLOSE AS YOU AND ME, MAYBE A STEP CLOSER.

Q OKAY. NOW, AS THEY STOOD HERE, WHICH WAY WERE THEY FACING?

A THEY WERE FACING MR. LEE.

Q SO THEY WOULD HAVE BEEN FACING TOWARD THE NUMBER TEN IN THIS CENTER PHOTOGRAPH ON STATE'S -- DEFENDANT'S EXHIBIT TWO?

A YES, SIR.

Q OKAY. AND AT THE TIME THAT YOU SAY THAT YOU WERE WALKING AWAY AND ALMOST HAD GOTTEN TO THE STREET OUT HERE, THE GALANT -- WHERE WOULD THE GALANT HAVE BEEN IN RELATION TO HIS PICTURE HERE?

A IN THIS AREA RIGHT HERE (INDICATING).

Q RIGHT ABOUT IN HERE (INDICATING)?

A YEAH.

Q ALL RIGHT. NOW, WAS DUSHUN HAVING ANY KIND OF COMMUNICATION AT THAT TIME WITH THESE TWO OTHER FELLOWS, THE ONE IN THE BLACK NORTHFACE JACKET AND THE ONE IN THE RACING JACKET?

A NO, SIR.

Q WAS HE EVEN FACING TOWARD THEM?

A NO, SIR.

Q WHICH WAY WAS HE FACING?

A WHEN I LEFT, HE MET ME IN THE STREET. SO HE WAS WALKING AWAY FROM IT AS WELL.

Q ALL RIGHT. SO IT IS YOUR TESTIMONY THAT HE HAD WITHDRAWN FROM THIS SITUATION, WHATEVER IT WAS, BEFORE YOU HEARD ANY SHOTS---

A YES, SIR.

Q ---IS THAT CORRECT?

A YES, SIR.

Q YOU HAD WITHDRAWN, HE HAD WITHDRAWN?

A YES, SIR.

Q THESE TWO OTHER FELLOWS THAT WERE HERE, THE BLACK NORTHFACE JACKET GUY, I'LL CALL HIM, AND THE ONE WITH THE RACING JACKET, HAD THEY WITHDRAWN?

A NO, SIR.

Q ALL RIGHT. AND YOU DID NOT SEE WHO SHOT BECAUSE YOU WERE FACING IN THE OPPOSITE DIRECTION?

A THAT'S RIGHT.

Q AND AT THAT POINT NOT LOOKING OVER YOUR SHOULDER; IS THAT CORRECT?
A YES, SIR.
Q OKAY. YOU MAY GO BACK TO THE...
(THE WITNESS RETURNS TO THE WITNESS STAND.)
Q DID YOU KNOW EITHER OF THOSE TWO FELLOWS DRESSED IN BLACK?
A AS I STATED EARLIER, I MET ONE OF THEM IN COLUMBIANA MALL WHEN HE WAS EMPLOYED THERE.
Q IS THAT MAURICE SANDERS?
A YES, SIR.
Q DO YOU RECOGNIZE THIS PHOTOGRAPH RIGHT HERE?
A YES, SIR.
Q WHO IS THAT?
A MAURICE SANDERS.
MR. TAYLOR: LET THE RECORD SHOW THAT HE HAS IDENTIFIED THE STATE'S EXHIBIT THIRTY-SIX.
Q IT IS EXHIBIT THIRTY-SIX; RIGHT?
A YES, SIR.
Q MAURICE SANDERS? WAS HE THE ONE WITH THE BLACK RACING JACKET ON?
A YES, SIR.
Q THE OTHER ONE WITH THE BLACK NORTHFACE JACKET, DO YOU KNOW WHO HE WAS?
A I FOUND OUT LATER THAT IT TURNED OUT TO BE LIMEL

SIMS.

Q BUT YOU DID NOT KNOW THAT AT THAT TIME?

A NO, SIR.

Q ALL RIGHT. NOW, I WANT TO TALK WITH YOU JUST A SECOND OR TWO ABOUT THE FRIDAY NIGHT THEN I'M GONNA COME BACK TO MONDAY NIGHT IN JUST A FEW MINUTES.

BUT ON THE FRIDAY NIGHT BEFORE, WHICH WOULD HAVE BEEN I BELIEVE THE 12TH OF JANUARY; CORRECT?

A YES, SIR.

Q YOU SAID THAT DUSHUN AND BRANDON AND YOU AND -- I THINK YOU SAID SOMEONE ELSE AND I MISSED THE OTHER NAME. DID YOU SAY THERE WAS SOMEONE ELSE WITH Y'ALL?

A NO, SIR.

Q OKAY. IT WAS JUST DUSHUN, BRANDON AND YOU?

A YES, SIR.

Q OKAY. AND DID YOU -- DID YOU SEE ALONZO SHULER ON THE NIGHT OF THE 15TH?

A NO, SIR.

Q DIDN'T SEE HIM ANYWHERE AROUND?

A NOT THAT NIGHT, SIR, NO.

Q ALL RIGHT. DID YOU KNOW RASHON LOGGINS?

A NO, I KNOW HIM BY FACE BUT NOT BY NAME UNTIL THIS WEEK.

Q ALL RIGHT. DID YOU SEE HIM AROUND THERE?

A YES, SIR.

Q ALL RIGHT. WHERE WAS HE?
A HE WAS WITH MR. PHILLIPS (SIC).
Q WHEN YOU SAY WITH HIM, HOW CLOSE TO HIM WAS HE?
A WELL, WHEN HE CAME UP THE HILL AND OTHERS PROCEEDED TO COME, HE WAS ALONG WITH THEM.
Q WALKING BASICALLY ALONE WITH HIM, ALONG SIDE OF HIM?
A MAYBE A FEW FEET BEHIND HIM.
Q OKAY. WAS ANYONE ELSE WITH LEE BESIDES LOGGINS AT THAT POINT?
A THERE WAS SEVERAL OF THEM.
Q DO YOU KNOW WHO THOSE OTHERS WERE?
A NO, NOT ALL OF THEM, SIR.
Q DO YOU KNOW WHO ANY OF THEM WERE?
A YES, SIR.
Q WHO WERE THEY?
A YOU HAVE SEVERAL OF THEM THAT HAVE TESTIFIED THIS WEEK.
Q OKAY. DO YOU RECALL THEIR NAMES?
A NOT ALL OF THEM.
Q DO YOU RECALL ANY OF THEM?
A NO, I CAN'T REMEMBER ALL OF THEIR NAMES.
Q YOU SAID THAT WHEN YOU GATHERED OUT THERE IT WAS TO DISPLAY YOUR MUSICAL TALENTS TO EACH OTHER, IN LARGE PART; RIGHT?
A WE DID THAT SOMETIMES.

Q SINGING?
A RAPPING.
Q WELL, RAPPING, SINGING, OKAY. THAT'S SOMETHING THAT A LOT OF PEOPLE DID?
A YES, SIR.
Q IN JANUARY OF 2001 ON THAT COLLEGE CAMPUS---
A YES, SIR.
Q ---IS THAT CORRECT? NOW, THE MAP THAT YOU BOUGHT FROM RENT MART, IF I UNDERSTAND IT CORRECTLY, YOU BOUGHT THAT MAP ON THE 17TH OF JANUARY---
A YES, SIR.
Q ---IS THAT CORRECT?
A YES, SIR.
Q AND THAT MAP COST YOU $3.00?
A YES, SIR.
Q ALL RIGHT. OKAY. DO YOU KNOW WHAT DAY IT WAS THAT YOUR GALANT HAD BEEN DISCOVERED ON FARMING CREEK?
A NO, SIR.
Q OKAY. STILL DON'T KNOW---
A NO.
Q ---EXACTLY WHAT DATE?
A NO, SIR.
Q OKAY. NOW YOU SAID THAT YOUR THINGS WERE PACKED UP AND Y'ALL WERE LOOKING FOR A PLACE TO LIVE; IS THAT CORRECT?

A YES, SIR.
Q WAS THAT SOMETHING THAT WAS ALREADY IN PROGRESS BEFORE THIS INCIDENT HAPPENED OR WERE YOU DOING IT BECAUSE OF THIS INCIDENT?
A WE WERE PACKED UP TWO MONTHS PRIOR.
Q OKAY. AND WHY?
A I WASN'T SATISFIED WITH MY LIVING CONDITIONS. I NEEDED MORE SPACE.
Q OKAY. THANK YOU, SIR -- WELL, NO. I TELL YOU, LET ME ASK YOU A COUPLE OF QUESTIONS.
DUSHUN -- YOU EVER SEE DUSHUN WEAR A RED BANDANA?
A NO, SIR.
Q THESE GUYS THAT NIGHT, THE TWO IN PREDOMINANTLY BLACK COLORS, DID THEY HAVE RED BANDANAS?
A YES, SIR.
Q WHERE WERE THOSE BANDANAS?
A I CAN'T REMEMBER EXACTLY WHERE.
Q OKAY. WERE YOU LOOKING FOR A FIGHT WITH ANYBODY?
A ABSOLUTELY NOT.
Q WAS DUSHUN LOOKING FOR A FIGHT WITH ANYBODY?
A NO, SIR.
Q DUSHUN, DID HE HAVE A GUN THAT NIGHT?
A NO, SIR.
Q OKAY. HAD YOU EVER KNOWN DUSHUN TO BE VIOLENT TOWARD ANYBODY?

A NO, SIR.
Q TRY TO HURT ANYBODY?
A NO, SIR.
Q HE'S ABOUT FIVE-ELEVEN, WOULD YOU SAY?
A YEAH, ABOUT THAT.
Q PROBABLY WEIGHS WHAT, ABOUT A HUNDRED AND FORTY-FIVE, HUNDRED AND FIFTY POUNDS; IS THAT RIGHT?
A YES, SIR.
Q PHILLIP LEE, ON THE OTHER HAND WAS WHAT, ABOUT SIX FOOT FIVE, TWO SIXTY OR SO?
A ABOUT SIX-THREE.
Q ABOUT SIX-THREE, ABOUT TWO HUNDRED AND SIXTY?
A YEAH, SOMEWHERE ALONG THERE.
Q MUCH MUCH BIGGER THAN DUSHUN?
A YES, SIR.
Q WOULD YOU SAY THAT SEVERAL OF THOSE FELLOWS WHO WERE WITH MR. LEE WERE MUCH MUCH BIGGER THAN DUSHUN?
A ABSOLUTELY.
Q DID YOU FEEL THAT YOUR BROTHER WAS IN TROUBLE OF SOME SORT WHEN YOU GOT BACK FROM CIRCUIT CITY?
A YES, I DID.
Q HOW LONG WAS YOUR BROTHER TO STAY HERE?
A OVER THE HOLIDAY.
Q OKAY. WAS HE GOING BACK FAIRLY SOON?
A YES, SIR.

Q AT THE TIME THAT ALL THIS CAME ABOUT---

A YES, SIR.

Q ---BACK TO NEW YORK? YOU GOT FAMILY IN NEW YORK?

A YES, SIR.

MR. TAYLOR: THANK YOU, SIR. THAT'S ALL I HAVE.

THE COURT: ALL RIGHT, MR. GASSER, YOU WANT TO DO IT NOW OR YOU WANT -- HOW'S EVERYBODY ON THE JURY DOING? DOES ANYBODY NEED TO TAKE A BREAK?

(PAUSE.)

THE COURT: TIME, OKAY. LET'S TAKE ABOUT A TEN MINUTE BREAK. WE GONNA SPEED THIS THING UP. TAKE ABOUT A TEN MINUTE BREAK THEN WE'LL COME BACK AND HAVE CROSS-EXAMINATION.

(JURY OUT AT 3:23 P.M.)

MR. STRICKLER: YOUR HONOR---

THE COURT: WAIT A MINUTE NOW. ALL RIGHT, YOU CAN COME ON DOWN.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

MR. TAYLOR: YOUR HONOR, THERE'S A MATTER THAT I THINK MAYBE WE CAN TAKE CARE OF PRETTY EXPEDITIOUSLY.

MAURICE SANDERS AND SHAKEEM WILSON ARE HERE. I UNDERSTAND FROM THEIR ATTORNEYS THAT THEY ARE ABSOLUTELY GOING TO TAKE THE FIFTH AMENDMENT. OF COURSE, THAT CAN'T BE DONE IN FRONT OF A JURY. I WOULD ASK THAT, IF YOU WOULD ALLOW ME TO DO IT, THE STATE HAS NO OBJECTION TO

DOING SO SINCE THEY WOULD BE MY WITNESSES, SO WE MIGHT GET THEM OUT OF THE CELLS AND BACK -- TRANSPORTED BACK TO WHEREVER THEY GO, IF WE COULD BRING THEM UP HERE, JUST HAVE THEM TAKE THE FIFTH AS FAR AS MY CASE AND BE DONE WITH THAT PART OF IT.

THE COURT: OR WE CAN JUST STIPULATE THAT YOU WERE GOING TO CALL THEM AS WITNESSES AND THEY TOOK THE STAND AND TOOK THE FIFTH AMENDMENT.

MR. TAYLOR: WELL...

THE COURT: DOESN'T THAT SATISFY WHATEVER?

MR. TAYLOR: I'M NOT SURE. I DID SOME RESEARCH ON IT AND I CAN'T FIND A CASE THAT SAYS THAT THE LAWYER CAN DO IT FOR THE PARTY.

THE COURT: WELL, IF WE ALL AGREE THAT IF THEY TAKE THE STAND THEY GONNA TAKE THE FIFTH AMENDMENT, THAT MAKES THEM UNAVAILABLE; RIGHT? SO WE ALL AGREE---

MR. TAYLOR: I BELIEVE IT WOULD. I CAN'T FIND A CASE THAT SAYS SO, SO I---

THE COURT: I THINK IT DOES AND IF WE ALL AGREE THAT WE'RE NOT GONNA GO TO THE TROUBLE TO GO DOWNSTAIRS AND BRING THEM UP HERE AND PUT THEM ON THE STAND AND DO ALL THAT KIND OF -- IF EVERYBODY AGREES.

MR. GASSER: I AGREE IF THE LAW ALLOWS US TO DO THAT. I DON'T WANT TO DO ANYTHING THAT -- THAT -- I MEAN, I WOULD -- I WOULD -- IF THE TWO LAWYERS, AS OFFICERS OF

THE COURT, WOULD PUT ON THE RECORD THAT THEY'VE MET WITH THEIR CLIENTS AND THAT'S WHAT THEY'RE PLANNING ON DOING. I MEAN, OBVIOUSLY THAT SATISFIES THE STATE. I DON'T KNOW IF IT SATISFIES THE DEFENSE OR NOT.

THE COURT: WELL, YOU KNOW---

MR. TAYLOR: WELL THAT WOULD SATISFY ME IF---

THE COURT: ---SOME PEOPLE LIKE TO JUMP THROUGH ALL THE HOOPS AND STRETCH EVERYTHING OUT. BUT IT'S 3:30 ---

MR. TAYLOR: NO, SIR, I'M NOT TRYING TO DO THAT.

THE COURT: NO, NO, I'M NOT SAYING YOU. I'M SAYING SOME JUDGES. BUT IF EVERYBODY AGREES AND THE LAWYERS SAY THEY GONNA TAKE THE FIFTH, WE CAN SAVE A FEW MINUTES BECAUSE WE'RE RUNNING OUT OF TIME AS FAR AS---

MR. TAYLOR: YES, SIR.

THE COURT: AS GETTING THIS THING DONE BEFORE THE END OF THE WEEK.

MR. STRICKLER: I HAVE NOTHING TO SAY ABOUT IT. I DON'T CARE WHETHER THEY TESTIFY OR NOT.

THE COURT: ALL RIGHT. MR. GARFIELD STUART, YOU REPRESENT WHO?

MR. STUART: MAURICE SANDERS, YOUR HONOR AND I'VE ALREADY PUT ON THE RECORD ON MONDAY EVENING THAT HE INTENDS TO EXERCISE THAT PRIVILEGE, YOUR HONOR. I THOUGHT THIS WAS A DEAD ISSUE. I WAS SURPRISED THIS MORNING WHEN I

WAS TOLD THAT I WOULD BE DOING THIS AGAIN TODAY. SO...

THE COURT: I WAS TOO. I THOUGHT SOMEBODY WAS GONNA TELL ME ABOUT IT.

MS. HUGGINS, YOU REPRESENT SHAKEEM WILSON?

MS. HUGGINS: I DO, YOUR HONOR.

THE COURT: AND IF HE TAKES THE STAND, HE'S ALSO GONNA TAKE THE FIFTH AMENDMENT?

MS. HUGGINS: THAT'S WHAT HE INSTRUCTED ME THIS MORNING, JUDGE.

THE COURT: ALL RIGHT?

MR. TAYLOR: ALL RIGHT, SIR.

THE COURT: DO WE ALL AGREE THAT WE CAN SKIP THE STEP OF BRINGING THEM UP HERE AND PUTTING THEM ON THE STAND AND DOING A FUTILE ACT?

MR. TAYLOR: VERY GOOD.

THE COURT: ALL RIGHT. DOES THAT SUIT YOU, MR. GASSER?

MR. GASSER: SUITS ME.

THE COURT: ALL RIGHT. IT'S DONE.

MR. TAYLOR: THANK YOU MUCH.

THE COURT: LET'S TAKE TEN MINUTES. WE'LL COME BACK AND HAVE CROSS.

(THE COURT IS IN RECESS.)

THE BAILIFF: COURT COME TO ORDER. ALL RISE, PLEASE.

THE COURT: THANK YOU, PLEASE BE SEATED.

(PAUSE.)

THE COURT: ALL RIGHT. NOW EVERYBODY'S GONNA HAVE TO COME IN AND BE SEATED. NOW WE CAN'T HAVE A BUNCH OF GOING IN AND GOING OUT BECAUSE THAT'S DISRUPTIVE TO THE COURT. SO COME IN AND HAVE A SEAT AND STAY IN.

ALL RIGHT, BRING THE JURY IN, PLEASE.

(JURY IN AT 3:40 P.M.)

THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT, MR. GASSER.

MR. GASSER: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. GASSER:

Q MR. STATEN, YOU'RE NICKNAME IS JAH; IS THAT CORRECT?

A YES, IT IS.

Q IS THAT J-A-H?

A YES, IT IS.

Q MANNY PERDUE THAT TESTIFIED YESTERDAY, I BELIEVE, IN FRONT OF THIS JURY, YOU KNEW MANNY PERDUE BECAUSE YOU KNEW HIS COUSIN, LAMAR PERDUE OR MAR PERDUE; IS THAT CORRECT?

A YEAH, I MET HIM THROUGH HIM?

Q PARDON ME?

A I MET HIM THROUGH HIM.

Q OKAY. IN FACT, AT ONE TIME YOU AND YOUR BROTHER DUSHUN HAD BEEN TO THE SUITE WHERE MANNY PERDUE LIVED ON BENEDICT COLLEGE CAMPUS; ISN'T THAT TRUE?

A YES, SIR.
Q OKAY. SO YOU KNEW WHERE MANNY PERDUE LIVED WHEN HE STAYED IN COLUMBIA; IS THAT CORRECT?
A ON CAMPUS.
Q AND DO YOU RECOGNIZE THE FACE OF SOME OF THESE GUYS THAT TESTIFIED, ANDREW BRITT? STAND UP, ANDREW.
(MR. BRITT COMPLIED.)
Q DID YOU RECOGNIZE ANDREW BRITT'S FACE WHEN HE TESTIFIED?
A YES, I DID.
Q OF SEEING -- FROM YOU HANGING OUT AT BENEDICT COLLEGE?
A YES, SIR.
Q OKAY. AND WHEN TONY KENNEDY TESTIFIED, YOU HAD NO PROBLEM RECOGNIZING HIS FACE WHEN HE CAME INTO THE COURTROOM AND TESTIFIED; ISN'T THAT TRUE?
A NO, I DIDN'T.
Q AND WHEN RASHON LOGGINS TESTIFIED, YOU HAD NO TROUBLE RECOGNIZING HIS FACE FROM SEEING HIM IN THE PARKING LOT OF HASKILL STREET DORM; ISN'T THAT TRUE?
A YES, IT IS.
Q AND OF ALL THE GUYS YOU AND YOUR BROTHER DUSHUN AND YOUR COUSIN SHAKEEM AND OF MAURICE SANDERS AND LIMEL SIMS, YOU BY FAR AND AWAY OF FIVE OF THOSE PEOPLE -- OF THE FIVE PEOPLE CHARGED IN THIS, YOU ARE BY FAR AND AWAY THE

BIGGEST ONE OF ALL; ISN'T THAT CORRECT?

A YES, I AM.

Q AND, MR. STATEN, YOU INDICATED YOU STARTED HANGING AROUND BENEDICT COLLEGE, THE DORM -- THE PARKING LOT AT HASKILL DORM SOMETIME AROUND THE FIRST OF JANUARY?

A I WOULDN'T SAY THE FIRST BUT THE FIRST WEEK OF JANUARY.

Q NOW, MAR PERDUE, HE WASN'T A -- HE WASN'T A STUDENT; ISN'T THAT TRUE?

A HE DIDN'T TELL ME HE WASN'T. I WAS UNDER THE ASSUMPTION HE WAS.

Q WELL, HOW DID YOU MEET HIM?

A IN THE MALL.

Q SO YOU MET THIS GUY IN THE MALL AND ALL OF A SUDDEN YOU ALL START HANGING OUT IN THE HASKILL DORMITORY PARKING LOT?

A WE MET HIM IN THE MALL. HE APPROACHED US BECAUSE HIS LICENSE WAS EXPIRED AND POLICE THAT WORK IN COLUMBIA MALL CONFISCATED HIS CAR KEYS BECAUSE THE TAGS ON HIS CAR WAS ALSO EXPIRED.

SO HE APPROACHED ME AND SHAKEEM, ASKED US WOULD WE SHOW OUR DRIVER'S LICENSE TO RETRIEVE HIS KEYS FOR HIM. SHAKEEM AGREED.

Q AND HOW DOES THAT GET YOU TO BENEDICT COLLEGE, THE PARKING LOT OF THE HASKILL DORMITORY?

A HE INVITED -- HE INVITED US UP THERE TO COME AND SEE HIM.
Q HE DIDN'T LIVE THERE; ISN'T THAT TRUE?
A I WOULDN'T KNOW. FROM MY UNDERSTANDING, HE WAS A STUDENT THERE.
Q SO WHEN HE INVITED YOU, DID HE INVITE YOU TO HIS ROOM?
A NO.
Q HE JUST SAID COME SEE ME IN THE PARKING LOT OF THE HASKILL DORMITORY ON BENEDICT COLLEGE?
A HE SAID, "THAT'S WHERE I'LL BE. COME OUT THERE AND CHILL WITH ME."
Q OKAY. AND THAT'S WHAT YOU STARTED DOING?
A YEAH.
Q AND IT WAS YOU AND YOUR BROTHER AND SOMETIMES YOUR COUSIN?
A YES.
Q NOW, YOU MET -- YOU MET MO SANDERS WHO'D HANG OUT AT BENEDICT COLLEGE AS WELL? IS THAT WHAT YOU SAID OR DID YOU MEET HIM AT THE MALL?
A NO, I MET HIM AT COLUMBIANA MALL.
Q OKAY. SO YOU MET HIM AT THE MALL, THE SAME WAY YOU MET MAR; IS THAT CORRECT?
A I MET MAR AT COLUMBIA MALL.
Q BUT YOU MET HIM AT A MALL, THAT'S WHAT I'M SAYING?

A YEAH.
Q SO AT TIMES WHEN YOU WERE IN THE HASKILL DORM OR THE PARKING LOT, IT WOULD BE -- SOMETIMES IT WOULD BE YOU AND YOUR BROTHER, SOMETIMES IT WOULD BE YOU AND YOUR BROTHER AND SHAKEEM, IS THAT TRUE?
A SOMETIMES.
Q SOMETIMES. AND YOU WOULD BE THERE VISITING MAR; IS THAT CORRECT? OR DID YOU START MEETING OTHER PEOPLE?
A I STARTED MEETING OTHER PEOPLE.
Q OKAY. YOU KNOW A DUDE NAMED KAREEM?
A NO.
Q KAREEM WASN'T THERE WITH YOUR BROTHER DUSHUN AND COUSIN SHAKEEM THE NIGHT PHILLIP LEE WAS KILLED, HANGING WITH YOU GUYS?
A NO, HE WASN'T HANGING WITH US.
Q WELL, WHO ELSE DID YOU MEET THAT YOU HANG WITH?
A WHAT DO YOU MEAN, HANG WITH?
Q WELL, YOU JUST SAID THAT YOU'D GO TO THE HASKILL DORMITORY PARKING LOT AND MEET OTHER PEOPLE AND HANG WITH THEM.
A YEAH.
Q WHO ELSE WE TALKING ABOUT?
A I ALSO SPECIFIED THAT WE HUNG WITH STUDENTS THAT WENT TO THE SCHOOL.
Q SO ONCE YOU GO TO KNOW SOME OTHER PEOPLE IN THE DORM

PARKING LOT, YOU WOULDN'T GO THERE JUST TO SEE LAMAR PERDUE; IS THAT CORRECT?

A NO.

Q YOU INDICATED ON -- ON DIRECT EXAMINATION THAT YOU'D NEVER MET LIMEL SIMS UNTIL THE NIGHT THAT PHILLIP LEE WAS KILLED; IS THAT TRUE?

A YES.

Q OKAY. DID YOU KNOW -- DO YOU KNOW A GIRL NAMED MICHELLE BUFF THAT'S BEEN SEATED BACK HERE WITH YOUR FAMILY AND FRIENDS?

A KNOW HER AS IN?

Q HAVE YOU SEEN HER DURING THE PROCEEDINGS?

A YES, I'VE SEEN HER---

Q SEEN HERE WITH YOUR FAMILY AND FRIENDS?

A ---DURING THE PROCEEDINGS. YEAH.

Q OKAY. ISN'T IT TRUE THAT YOU AND LIMEL SIMS AND MAURICE AND YOUR BROTHER DUSHUN AND SHAKEEM HAD BEEN OVER TO HER HOUSE BEFORE, DAYS BEFORE PHILLIP LEE WAS EVER KILLED?

A I'VE NEVER BEEN TO HER HOUSE.

Q YOU'VE NEVER BEEN WITH LIMEL SIMS AND MO SANDERS AND YOUR BROTHER IN THE PRESENCE OF MICHELLE BUFF?

A NO.

Q NOW YOU WERE KIND OF -- WHENEVER YOU WERE HANGING OUT WITH YOUR BROTHER AND SHAKEEM -- AND YOU'RE THE OLDEST

OF THE THREE; CORRECT?
A YES, I AM.
Q AND OF COURSE THE BIGGEST OF THE THREE; CORRECT?
A YES, I AM.
Q I MEAN, YOU'RE KIND OF THE -- THEY LOOK UP TO YOU. YOU'RE KIND OF THE LEADER IN THEIR EYES, ARE YOU NOT?
A NO, I'M NOT.
Q YOU'RE NOT?
A NO, I'M NOT.
Q YOU DON'T CONSIDER YOURSELF AS THE BIG BROTHER AND THE BIGGER OF THE THREE? KIND OF THE---
A I CONSIDER MYSELF TO BE THE OLDER OF THE THREE, NOT THE LEADER OR THE BOSS OR WHATEVER YOU TRYING TO INSINUATE.
Q WHEN ANY OF THEM WERE IN TROUBLE, OF COURSE, AS THE BIG BROTHER, YOU'D WANT TO PROTECT YOUR LITTLE BROTHER OR YOUR COUSIN OR ANY OF YOUR FRIENDS. AND YOU'D MAKE IT YOUR BUSINESS IF IT MEANT THEIR BUSINESS; CORRECT?
A NOT JUST AS THE BIG BROTHER BUT AS A CONCERNED RELATIVE, AS ANYBODY WOULD BE FOR THEIR KIN.
Q OKAY. AND THAT INCIDENT THAT TOOK PLACE ON FRIDAY NIGHT BEFORE -- BEFORE PHILLIP WAS KILLED, YOU WERE PRESENT DURING THAT INCIDENT; ISN'T THAT TRUE, MR. STATEN?
A YES, I WAS.
Q OKAY. AND YOUR LITTLE BROTHER DUSHUN STARTED THAT

INCIDENT, DID HE NOT?

A NO, HE DIDN'T.

Q OKAY. SO -- AND I'M NOT TRYING TO PIT, I'M JUST SAYING DO YOU AGREE OR DISAGREE WITH THE STATEMENTS -- AGREE OF DISAGREE WITH THIS STATEMENT, "ABOUT TWO WEEKS PRIOR TO THE SHOOTING, MR. LEE AND LUCIUS AND HIS BROTHER, WHO IS A KNOWN BLOOD, STARTED HAVING ARGUMENTS"?

DO YOU REMEMBER THAT TESTIMONY THAT CAME IN EARLIER TODAY THROUGH YOUR FRIEND BRANDON McCANTS?

A YEAH, I REMEMBER THAT.

Q OKAY. SO DO YOU AGREE OR DISAGREE WITH WHAT -- THE FACT THAT YOU AND YOUR BROTHER DUSHUN, WHO'S A KNOWN BLOOD, STARTED HAVING ARGUMENTS, PLURAL, WITH THE VICTIM IN THIS CASE IN THAT DORMITORY PARKING LOT SEVERAL DAYS BEFORE PHILLIP WAS KILLED, DO YOU AGREE OR DISAGREE WITH THAT?

A I AGREE WE HAD AN ARGUMENT BUT PLURAL ARGUMENTS, I DO NOT AGREE WITH THAT.

Q OKAY. SO YOU DISAGREE WITH ARGUMENTS?

A YES, I DO.

Q WHAT -- AND ISN'T IT TRUE THAT PART OF THE ARGUMENTS WAS YOUR LITTLE BROTHER DUSHUN, WEARING A RED BANDANA, DIDN'T LIKE PHILLIP LEE WEARING HIS BLUE; ISN'T THAT TRUE?

A NO, IT'S NOT TRUE.

Q YOU DENY THE FACT THAT YOUR BROTHER WOULD CONSTANTLY

WEAR RED BANDANAS, WOULD BE SEEN IN THE HASKILL'S PARKING LOT DORM WEARING RED BANDANAS, YOU DENY THAT?

A YES, I DO.

Q SO THAT FRIDAY NIGHT, DUSHUN DIDN'T GET UPSET WITH PHILLIP LEE AND START ARGUING WITH PHILLIP LEE AND STATE THE WORD, "SHOOT THE FIVE" OR "WANTED TO SHOOT THE FIVE WITH PHILLIP LEE"? HE DIDN'T DO ALL THAT?

A I NEVER HEARD HIM SAY, "SHOOT THE FIVE".

Q WHAT DID YOU HEAR DUSHUN SAY?

A I DIDN'T HEAR TOO MUCH OF WHAT HE SAID. I WAS TOO BUSY DEALING WITH ALFONSO. HE WAS THE ONE THAT CAME UP KIND OF IRATE PULLING HIS SHIRT OFF SAYING, "WHATEVER, WHATEVER", AND ALL THIS OTHER NONSENSE, YOU KNOW. AND HE'S BIGGER THAN ME. I WASN'T GONNA LET HIM HIT OR POUND ON MY BROTHER. THAT'S WHY I WAS TALKING TO HIM. AND ME AND HIM RESOLVED THE SITUATION.

Q SO YOU DON'T KNOW WHAT WENT ON THEN BETWEEN YOUR BROTHER DUSHUN -- YOU DON'T KNOW WHAT WORDS WERE EXCHANGED BETWEEN DUSHUN AND PHILLIP LEE; IS THAT CORRECT?

A NO.

Q BECAUSE YOUR FOCUS WAS WITH LO SHULER?

A YES, IT WAS.

Q SO IF YOUR BROTHER DUSHUN MADE ANY THREATS TOWARDS PHILLIP LEE YOU WOULDN'T KNOW ABOUT IT BECAUSE THAT'S NOT WHAT YOUR CONCERN WAS?

A NO. IF HE MADE THREATS TO MY BROTHER, I WOULDN'T HEARD THAT EITHER.

Q YOU DIDN'T HEAR ANY THREATS THAT HE MADE TO YOUR BROTHER?

A LIKE I DIDN'T HEAR MY BROTHER MAKE ANY THREATS TO HIM, EITHER.

Q AND YOUR BROTHER WASN'T WEARING RED BANDANAS?

A NO.

Q WAS PHILLIP LEE WEARING HIS BLUE?

A I CAN'T RECALL.

Q JUST SO WE'RE SURE ABOUT THIS NOW SINCE THERE'S BEEN TESTIMONY, MR. STATEN, DO YOU DENY THE FACT THAT STARTING EARLIER IN THE WEEK BEFORE PHILLIP LEE EVEN GOT THERE, AROUND THE 8TH AND THE 9TH AND THE 10TH AND THEN WHEN PHILLIP LEE GOT THERE, THAT YOU AND YOUR BROTHER AND YOUR CROWD WERE HAVING ARGUMENTS WITH SOME OF THOSE STUDENTS AT BENEDICT COLLEGE IN THE HASKILL DORM PARKING LOT? DO YOU DENY THAT?

A I DENY YOU INSINUATING ME AND MY CROWD. WHAT IS THAT ME AND MY CROWD?

Q I'M SORRY. YOU AND YOUR FRIENDS, MR. STATEN?

A WHAT FRIENDS? I TOLD YOU I WAS UP THERE WITH MY BROTHER AND MY COUSIN. AND ANYBODY I CAME IN CONTACT WITH WAS A STUDENT AT THE SCHOOL. SO THERE WAS NO ME AND MY CROWD.

Q WELL, I THOUGHT -- I'M SORRY, I THOUGHT YOU SAID AT TIMES YOU'D GO SEE LAMAR PERDUE; CORRECT?
A OKAY AND---
Q DID YOU TESTIFY TO THAT?
A AND THAT'S A SINGLE PERSON. YOU'RE INSINUATING MORE THAN ONE PERSON.
Q I'M SORRY. DO YOU REMEMBER WHEN I ASKED YOU IF LAMAR PER -- YOU MET OTHER PEOPLE THERE?
A YES.
Q SO AT TIMES YOU WENT TO SEE OTHER PEOPLE OTHER THAN JUST LAMAR. DO YOU REMEMBER ANSWERING THAT QUESTION?
A YES. AND IF YOU LISTEN TO MY PREVIOUS TESTIMONY, A LOT OF MY EX-COWORKERS ATTENDED THAT SCHOOL. SO IF I RAN INTO THEM IN THE PARKING LOT, THEY WOULD STOP AND TALK TO ME AS WELL.
Q SO IT WASN'T UNUSUAL FOR YOU TO BE ASSOCIATED WITH OTHER PEOPLE IN THAT PARKING LOT OTHER THAN YOUR BROTHER AND COUSIN; CORRECT?
A NO, IT'S NOT.
Q NOW, WHEN YOU AND YOUR BROTHER WERE GETTING READY TO LEAVE AND SHAKEEM -- WAS SHAKEEM THERE WITH YOU THAT NIGHT?
A WHICH NIGHT ARE WE TALKING ABOUT?
Q FRIDAY NIGHT?
A NO, HE WASN'T.

Q OKAY. WHEN YOU AND YOUR BROTHER WERE GETTING READY TO LEAVE IN THE WHITE CAR, DO YOU DENY STOPPING THE CAR, GETTING OUT OF THE CAR AND TURNING AROUND AND LOOKING AT SOME OF THE PEOPLE THERE SAYING, "I'M GONNA REMEMBER SOME FACES"? DO YOU DENY MAKING THAT STATEMENT?

A YES, I DO.

(PAUSE.)

Q BUT YOU DO REMEMBER OFFICER BOYD OR AT LEAST A PUBLIC SERVICE OFFICER COMING AND MAKING SURE THE SITUATION WAS RESOLVED? YOU DO REMEMBER THAT?

A THE SITUATION WAS RESOLVED BEFORE THE OFFICER ARRIVED.

Q BUT YOU REMEMBER THE OFFICER ARRIVING?

A YEAH, I REMEMBER SEEING THE CAR PULL UP.

Q AND PART OF WHAT YOU INDICATED ON DIRECT EXAMINATION WAS YOU WERE CONCERNED FOR THE SAFETY OF YOUR BROTHER DUSHUN; CORRECT?

A YES.

Q AND SO YOU LEAVE?

A YES.

Q AND THE NEXT NIGHT, SATURDAY NIGHT, YOU COME BACK ON THE CAMPUS THE NEXT NIGHT AND GET IN ANOTHER VERBAL ALTERCATION WITH THE VICTIM, DO YOU NOT?

A NO.

Q OKAY. SO DO YOU DENY -- AND AGAIN, YOU INDICATED

YOU REMEMBER -- YOU KNOW ANDREW BRITT'S FACE, YOU KNOW THAT FACE?

A YEAH.

Q OKAY. DO YOU DENY ON SATURDAY NIGHT, YOU AND YOUR BROTHER AND SHAKEEM AGAIN -- IN THE SAME PARKING LOT, DO YOU DENY AGAIN GETTING IN A VERBAL ALTERCATION WITH PHILLIP LEE, YOU YOURSELF, YOU DENY IT?

A YES, I DO. YES, I DO.

Q NOW, ON SUNDAY -- LET ME ASK YOU THIS, MR. STATEN, WERE YOU WITH YOUR BROTHER DUSHUN WHEN HE THREATENED PHILLIP LEE WITH A GUN ON SUNDAY?

A WHEN HE -- NO, I WASN'T -- WHEN HE THREATENED -- WHAT IS THAT? I DON'T RECALL MY BROTHER THREATENING ANYBODY WITH ANY KIND OF A WEAPON.

Q WERE YOU WITH YOUR BROTHER WHEN HE WAS ON CAMPUS ON SUNDAY?

A I MIGHT HAVE BEEN ON CAMPUS, YEAH.

Q BUT YOUR BROTHER MIGHT HAVE BEEN ON CAMPUS WITHOUT YOU?

A ON SUNDAY?

Q LET ME -- LET ME GET YOU TO RECALL SOMETHING. I'M NOT TRYING TO PIT OR ANYTHING. DO YOU RECALL THE TESTIMONY THAT PHILLIP LEE CAME INTO HIS DORM ROOM ON SUNDAY NIGHT UPSET, ANGRY, AND TOLD HIS ROOMMATE ABOUT "THE LITTLE BROTHER WITH THE DRED -- WITH THE BRAIDS

PULLED A GUN ON ME". AND HE WAS PUNCHING THE WALL AND HE WAS UPSET. DO YOU REMEMBER THAT TESTIMONY?

A YEAH, I REMEMBER THAT.

Q WERE YOU WITH YOUR LITTLE BROTHER WHEN HE PULLED THE GUN---

A NO.

Q ---ON PHILLIP LEE ON SUNDAY?

A IN THE PRESENCE OF MYSELF, MY BROTHER NEVER PULLED A GUN ON ANYONE.

Q YOU DON'T -- SO YOU'RE -- YOU DENY SEEING YOUR BROTHER PULL A GUN ON PHILLIP LEE ON SUNDAY. YOU DENY -- YOU DENY SEEING THAT; CORRECT?

A YES, I DO.

Q YOU DON'T KNOW WHETHER OR NOT YOUR BROTHER COULD HAVE PULLED A GUN ON PHILLIP LEE THAT SUNDAY; DO YOU?

A IF HE WAS WITH ME AND I SAID HE DIDN'T, HOW COULD HE?

Q IF HE WASN'T WITH YOU, MR. STATEN?

A IF HE WASN'T WITH ME, WHAT? IS IT POSSIBLE?

A IF HE WASN'T WITH YOU, YOU DON'T KNOW WHAT HE COULD HAVE DONE; ISN'T THAT TRUE?

A YEAH, THAT'S TRUE.

Q NOW, GOING TO JANUARY THE 15TH. AND LET ME GET SOMETHING STRAIGHT HERE, MR. STATEN. THERE'S NO QUESTION, AT SOME POINT IN TIME, STANDING THERE BY THE GALANT OR ON

THE SIDEWALK, YOU, YOUR BROTHER, A GUY WE NOW KNOW BY THE NAME OF LIMEL SIMS, YOUR COUSIN SHAKEEM WILSON, MAURICE SANDERS, THERE'S NO QUESTION THAT THE FIVE OF YOU WERE OUT THERE BY THE GALANT SOMETIME AT THE SAME TIME? THERE'S NO QUESTION ABOUT THAT; TRUE?

A I WASN'T BY THE GALANT.

Q BY THE SIDEWALK, BY THE GRASS, BY THE GALANT, ANYWHERE IN THAT AREA?

A AGAIN, I WAS NOT BY THE GALANT.

Q BY THE SIDEWALK, BY THE GRASS, BY THE GALANT?

A BUT WHEN YOU SAY THE THREE AND I AGREE TO, YEAH, I WAS BY -- THEN THAT WAS INSINUATING I WAS BY THE CAR. I WAS NOT. THE SIDEWALK, YES, I WAS ON THE SIDEWALK.

Q I'M SAYING THE FIVE OF YOU GUYS -- THERE'S NO QUESTION THAT THE FIVE OF YOU WERE EITHER ON THE SIDEWALK, THE GRASS OR THE GALANT; IS THAT CORRECT?

A YES, THAT IS.

Q AND IF YOU WERE TO DRAW UP SIDES -- I MEAN YOU HAD NO ANIMOSITY AGAINST YOUR BROTHER; CORRECT?

A NO.

Q AND YOU HAD NO ANIMOSITY AGAINST THE GUY IN THE BLACK NORTHFACE THAT WAS WITH YOUR BROTHER; CORRECT?

A I DON'T KNOW IF -- WHAT DO YOU MEAN WITH MY BROTHER?

Q WELL, YOU SAID -- WHEN YOU PULLED IN YOU SAW A COMMOTION UP THERE AND YOU SAW THESE GUYS HANGING OUT.

A AND THAT MAKES IT THAT THEY WERE WITH MY BROTHER BECAUSE---

Q THESE GUYS -- MAURICE SANDERS AND SHAKEEM AND LIMEL AND YOUR BROTHER, WHEN YOU LEFT TO GO TO CIRCUIT CITY, THEY WERE ALL HANGING OUT THERE, WEREN'T THEY?

A NO THEY WEREN'T.

Q THEY WEREN'T HANGING OUT THERE TOGETHER?

A NO, THEY WEREN'T.

Q YOUR TESTIMONY IS THESE GUYS WEREN'T TOGETHER WHEN YOU WENT TO CIRCUIT CITY?

A I TOLD YOU WHEN I WENT TO CIRCUIT CITY, MY BROTHER AND MY COUSIN WERE OUT THERE AND A FEW OF THE STUDENTS FROM THE SCHOOL THAT WE WERE RHYMING WITH.

Q SO IT'S YOUR TESTIMONY WHEN YOU ARRIVED BACK, THE GUY IN THE BLACK NORTHFACE AND MAURICE SANDERS WERE NOW THERE ON THE SCENE?

A YES, I SEEN THEM THEN.

Q THE POINT I'M TRYING TO MAKE IS THAT YOU DIDN'T HAVE -- THERE'S OBVIOUSLY NO ANIMOSITY BETWEEN YOUR BROTHER DUSHUN OR YOU AND YOUR COUSIN; CORRECT?

A CORRECT.

Q OKAY. THERE WAS NO ANIMOSITY BETWEEN YOU AND LIMEL?

A I DON'T KNOW HIM.

Q NO ANIMOSITY BETWEEN YOU AND MAURICE?

A NO.

Q OKAY. AND IF YOU WEREN'T THERE, YOU DON'T KNOW WHAT DUSHUN, LIMEL, SHAKEEM AND MAURICE WERE SAYING OR DOING TO THESE GUYS AND PHILLIP LEE BECAUSE YOU WEREN'T THERE; CORRECT?

A CORRECT

Q WHATEVER THREATENING REMARKS DUSHUN OR THE GUY IN THE BLACK NORTHFACE OR MO OR YOUR COUSIN SHAKEEM, WHATEVER, REMARKS THEY MAY HAVE MADE IN THE TEN, FIFTEEN, TWENTY MINUTES BEFORE YOU EVER ARRIVED THERE, YOU DON'T KNOW NOTHING ABOUT; ISN'T THAT TRUE?

A I DON'T.

Q BUT WHEN YOU GET UP THERE, YOUR TESTIMONY IS YOU SEE PHILLIP LEE AND ACCORDING TO YOU ALL THESE PEOPLE IN THE SEMI-CIRCLE BEHIND HIM---

A YES.

Q OKAY. AND OF COURSE DUSHUN, LIMEL, SHAKEEM AND MAURICE, THEY'RE IN FRONT OF HIM?

A IN FRONT OF WHO?

Q IN FRONT OF THE VICTIM AND HIS---

A NO. IT WAS TWO PEOPLE IN FRONT OF HIM ARGUING WITH HIM.

Q OKAY. AND WHERE WAS SHAKEEM AND YOUR COUSIN AND YOUR BROTHER?

A MY BROTHER WAS ON ONE SIDE OF THE CAR AND SHAKEEM WAS ON THE OTHER.

Q OKAY. SO YOUR BROTHER'S ON ONE SIDE OF THE CAR, AND SHAKEEM'S ON THE OTHER, BLACK NORTHFACE AND MO SANDERS ARE UP HERE. SO THERE'S FOUR OF THE -- THE FOUR OF THEM ARE IN THIS GENERAL AREA RIGHT HERE (INDICATING); CORRECT?

A YEAH.

Q OKAY. AND THE VICTIM'S OVER HERE (INDICATING) AND THERE'S HIS FRIENDS, ACCORDING TO YOUR TESTIMONY, IS LINED UP IN A SEMI-CIRCLE BEHIND HIM, IS THAT YOUR TESTIMONY?

A NOT ONLY IN THE SEMI-CIRCLE BUT ON EITHER SIDE OF HIM, CLOSELY.

Q SO IT'S CLEAR THAT, IS IT NOT, THAT PHILLIP LEE AND HIS FRIEND -- I MEAN, THIS ISN'T -- YOU WALK UP TO THE SITUATION. IT WASN'T SOME FRIENDSHIP GATHERING, WAS IT, MR. STATEN?

A NO, IT WASN'T.

Q I MEAN, IT WAS OBVIOUS THAT PHILLIP LEE AND HIS FRIENDS WEREN'T SOCIALIZING WITH YOUR BROTHER, SHAKEEM, LIMEL AND MAURICE SANDERS---

A WHEN I WALKED --

Q ---THEY WEREN'T SOCIALIZING THEN, WERE THEY?

A NO. BUT WHEN I WALKED UP, THEY WEREN'T ARGUING WITH MY BROTHER OR SHAKEEM EITHER.

Q THERE HAD BEEN A PREVIOUS ARGUMENT WITH YOUR BROTHER?

A ONE PREVIOUS ARGUMENT THAT I KNOW OF.

Q THAT YOU KNOW OF?
A YEAH.
Q SO THERE'S NO LOVE LOST FROM PHILLIP LEE'S FRIENDS AND THE FIVE OF YOU IS THE POINT I'M TRYING TO MAKE?
A WELL, WHAT DO YOU MEAN, LOVE LOST?
Q THERE WAS NO -- THERE WAS NO -- THERE WAS NO -- PHILLIP LEE AND HIS FRIENDS WERE NOT HAVING AN ENGAGING AND FRIENDLY CONVERSATION WITH YOUR BROTHER AND SHAKEEM WHEN YOU PULLED UP, WERE THEY?
A NO, THEY WASN'T EVEN TALKING TO THEM.
Q OKAY. AND, OF COURSE, THEY WEREN'T WITH LIMEL OR WITH MAURICE WHEN YOU PULLED UP; CORRECT?
A NO, THEY WEREN'T.
Q AND THE LIGHTING OUT THERE WAS REALLY GOOD, WASN'T IT, MR. STATEN?
A GOOD ENOUGH TO SEE.
Q GOOD ENOUGH TO SEE?
A YEAH.
Q YOU DIDN'T HAVE ANY PROBLEM RECOGNIZING THESE GUYS FACES THAT YOU'VE SEEN BEFORE, DID YOU?
A NO.
Q I TAKE IT -- IT WAS YOUR TESTIMONY ON DIRECT -- I TAKE IT IT'S YOUR TESTIMONY THAT YOUR BROTHER DUSHUN AND SHAKEEM WEREN'T WEARING RED BANDANAS ALONG WITH THE GUYS IN THE BLACK NORTHFACE AND MAURICE SANDERS, IS THAT YOUR

TESTIMONY?

A YES, THAT IS.

Q ONLY -- ONLY LIMEL SIMS AND ONLY MAURICE SANDERS WERE WEARING RED BANDANAS, NOT YOUR BROTHER AND NOT YOUR COUSIN?

A THAT'S RIGHT.

Q OF COURSE, NO ONE'S EVER SAID THAT YOU EVER WORE RED. YOU NEVER HEARD THAT TESTIMONY IN HERE?

A NO.

Q WELL, IN FACT, IT'S ALWAYS SAID WHENEVER THEY SAW YOU, YOU WEREN'T WEARING RED; ISN'T THAT TRUE?

A THAT IS TRUE.

Q BECAUSE YOU NEVER WORE RED; CORRECT?

A THAT'S CORRECT.

Q WHEN YOU GOT THERE THE FIRST TIME, YOU INDICATED YOU SAW THAT THE GALANT WAS THERE AND SHAKEEM WAS THERE? IS HE THE ONE THAT DROVE THE GALANT THERE?

A WHEN I GOT THERE THE FIRST TIME?

Q WHEN YOU GOT THERE THE FIRST TIME?

A NO, THE GALANT WASN'T THERE.

Q OKAY. WHEN YOU WERE THERE HANGING OUT BEFORE YOU WENT TO CIRCUIT CITY, SHAKEEM PULLS UP IN THE GALANT?

A YEAH.

Q OKAY. AND YOU'RE -- YOU'RE ON THIS, ACCORDING TO YOUR TESTIMONY, SOME PROBATIONARY STATUS. YOU'RE TRYING

TO GET A JOB WITH THE DEPARTMENT OF JUVENILE JUSTICE AS AN OFFICER; IS THAT CORRECT?

A I WAS EMPLOYED WITH THEM.

Q SO YOU WERE EMPLOYED AS AN OFFICER WITH THE DEPARTMENT OF JUVENILE JUSTICE?

A AND I TOOK A LEAVE OF ABSENCE TO STRAIGHTEN OUT SOME PAPERWORK?

Q AND SHAKEEM PULLS UP IN A CAR THAT YOU KNOW IS UNINSURED?

A YEAH.

Q AND OF COURSE YOU CAN GET IN TROUBLE FOR DRIVING AN UNINSURED CAR, YOU KNOW THAT?

A YES, YOU CAN.

Q WHEN DID YOU TELL HIM TO GO AHEAD AND TAKE THE CAR BACK HOME?

A WHEN HE PULLED UP, I ASKED HIM WHAT WAS HE DOING THERE.

Q SO WHEN DID YOU TELL HIM TO TAKE THE CAR BACK HOME?

A WHAT DO YOU MEAN WHEN DID I TELL HIM TO TAKE THE CAR BACK HOME?

Q I MEAN, YOU'VE INDICATED TO THE JURY THAT YOU DIDN'T DRIVE THE CAR---

A I DIDN'T.

Q ---BECAUSE IT WAS A UNINSURED VEHICLE. WHEN DID YOU TELL HIM TO TAKE THE CAR BACK HOME?

A I DIDN'T TELL HIM TO TAKE IT BACK HOME. WHEN HE PULLED UP I ASKED HIM WHAT HE BE DOING HERE? HE SAID, "I JUST CAME TO CHILL." I SAID, "YEAH, WHY YOU DROVE THE CAR?" HE SAID, "COME ON, MAN." BY THEN I SEEN BRANDON PULL UP. WE TALKED, I LEFT.

Q AND YOU LEFT AND YOUR COUSIN AND YOUR BROTHER WERE THERE. THERE'S NO QUESTION ABOUT THAT?

A YEAH.

Q CORRECT? AND BASED ON ALL -- THE PRIOR INCIDENT ON FRIDAY, YOU HAD NO PROBLEM GOING TO CIRCUIT CITY AND LEAVING YOUR BROTHER OUT THERE WITH YOUR COUSINS DOING THEIR THING?

A NO PROBLEM.

Q OKAY. NOW, WHEN YOU GET BACK, YOU INDICATED WHEN YOU PULL IN YOU NOTICE THERE'S A COMMOTION UP THE HILL I GUESS IS HOW YOU REFERRED TO IT?

A YEAH.

Q YOU ROLLED DOWN YOUR WINDOW BECAUSE THE WINDOWS WERE TINTED?

A YES, THEY WERE.

Q NOW, YOUR BROTHER AND COUSIN, ACCORDING TO YOUR TESTIMONY, THEY WEREN'T INVOLVED IN THE COMMOTION; CORRECT?

A THEY WEREN'T.

Q AND YOU DIDN'T REALLY EVEN KNOW SHAKEEM WILSON OR --

I MEAN, MAURICE SANDERS AND LIMEL SIMS, DID YOU?
A NO, I DIDN'T.
Q OKAY. SO YOU COME UP ON THE SITUATION. EVERYTHING'S FINE WITH YOU, YOU'RE OUT WITH YOUR BUDDY OUT AT CIRCUIT CITY; RIGHT?
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q OKAY. ACCORDING TO YOUR TESTIMONY, YOU COME UP ON A SITUATION. YOUR COUSIN AND YOUR BROTHER, ACCORDING TO YOUR TESTIMONY, AREN'T ARGUING WITH ANYBODY, AREN'T HAVING ANY PROBLEM WHATSOEVER; CORRECT?
A CORRECT.
Q YOU DON'T EVEN HARDLY KNOW THESE OTHER TWO DUDES?
A THAT'S RIGHT.
Q CORRECT? SO IT'S YOUR TESTIMONY THAT YOU CAME INTO THIS SITUATION AND WANTED TO RESOLVE THE SITUATION BECAUSE THAT'S JUST THE KIND OF GUY THAT YOU ARE?
A NOT ONLY THAT, BECAUSE OF THE -- OUR ENGAGEMENT THAT WE HAD FRIDAY. AND I NOTICED A LOT OF THE SAME FACES UP THERE. SO IMMEDIATELY THE FIRST THING THAT I WOULD THINK ABOUT IS MY BROTHER ANY MY COUSIN.
SO THAT'S WHY I WALKED UP THERE. AND THE FIRST QUESTION I ASKED WAS, WHAT WAS GOING ON.
Q I THOUGHT YOU JUST TOLD THE JURY THAT AS SOON AS YOU WALKED UP THERE, YOU NOTICED THAT YOUR BROTHER AND COUSIN WERE BACK BY THE CAR. THEY WEREN'T INVOLVED IN ANY WAY

A THEY WASN'T.

Q ---WHATSOEVER WITH THIS ARGUMENT?

A NO, THEY WASN'T.

Q SO EVERYTHING WAS COOL AS FAR AS YOU WERE CONCERNED; CORRECT?

A THEY COULDN'T HAVE BEEN IF THEY WERE STANDING ON THE SIDEWALK AND THERE WAS A BIG CROWD AND A LOT OF COMMOTION. WHETHER MY BROTHER OR MY COUSIN WAS INVOLVED IN THE ARGUING, I STILL WENT UP THERE AND I ASKED WHAT WAS GOING ON. I DID THAT. I WALKED UP THERE AND ASKED WHAT WAS GOING ON.

Q AND WHEN YOU GOT UP THERE AND YOU ASKED WHAT WAS GOING ON, NOBODY WAS THROWING ANY PUNCHES, WERE THEY?

A NO.

Q NOBODY HAD ANY WEAPONS, DID THEY?

A NO.

Q AND YET YOU DECIDED TO STAY THERE EVEN THOUGH NO ONE WAS THROWING PUNCHES, NO ONE WAS THROWING WEAPONS AND ACCORDING TO YOUR TESTIMONY, YOUR COUSIN AND YOUR BROTHER WEREN'T INVOLVED IN THEY ARGUMENT---

A THEY WEREN'T---

Q ---THAT'S YOUR TESTIMONY?

A ---INVOLVED AND I DIDN'T STAY THERE. I ASKED THE QUESTION TWICE TO TWO DIFFERENT PEOPLE, DIDN'T GET A

RESPONSE, TURNED AND WALKED AWAY.

Q MR. STATEN, ISN'T IT A FACT THAT WHEN YOU PULLED UP YOU JUMPED OUT OF THAT CAR BECAUSE YOUR BROTHER DUSHUN WAS KNEE DEEP IN THIS? HE WAS UP THERE ARGUING WITH PHIL; ISN'T THAT TRUE?

A IF YOU CAN RECALL---

Q TELL YOU WHAT, I HATE TO INTERRUPT YOU. BUT YOU CAN'T -- UNDER THE RULES YOU CAN SAY YES OR NO, THEN YOU CAN EXPLAIN.

A OKAY.

Q OKAY.

A ALL RIGHT.

Q ISN'T IT TRUE THAT WHEN YOU GOT OUT OF THAT CAR, THE REASON WHY YOU GOT INTO IT -- YOU GOT INTO THAT ARGUMENT IS BECAUSE YOU SAW YOUR LITTLE BROTHER AND HIS FRIENDS ARGUING WITH PHILLIP LEE, THE SAME PERSON THEY WERE ARGUING WITH ON FRIDAY NIGHT AND SATURDAY NIGHT; ISN'T THAT TRUE?

A NO, IT'S NOT.

Q YOU DENY THAT.

A YES, I DO.

Q YOU DENY HAVING HEATED EXCHANGED WORDS WITH PHILLIP LEE?

A YES, I DO.

Q YOU AND HIM ARE ABOUT THE SAME SIZE; ISN'T THAT

TRUE?

A YEAH, HE WAS A LITTLE BIGGER THAN ME.

Q OKAY. SO YOU DENY THE FACT -- YOU DENY -- THE TESTIMONY YOU'VE SEEN COME BEFORE THIS JURY, YOU DENY THAT YOU AND PHILLIP LEE EXcHANGED IN A HEATED ARGUMENT OUT THERE ON MONDAY NIGHT, JANUARY THE 15TH---

MR. TAYLOR: OBJECTION, YOUR HONOR. PITTING.

THE COURT: DON'T PIT.

Q DO YOU DENY -- YOU DENY THAT?

A YES, I DO DENY THAT.

Q AND OF THE PEOPLE THAT WERE OUT THERE, DUSHUN, LIMEL, SHAKEEM, MAURICE, THEY WERE OUT THERE IN THAT WELL-LIT AREA, THE BIGGEST ONE WAS YOU; CORRECT?

A NO.

Q OF THOSE FIVE PEOPLE?

A YEAH. YEAH.

Q YOU'RE THE BIGGEST ONE OF THOSE FIVE PEOPLE; CORRECT?

A WHEN I ARRIVED, YES, I WAS.

Q YOU STANDOUT AS FAR AS SIZE AND WEIGHT AND BUILD OF THOSE FIVE PEOPLE, DO YOU NOT?

A YES, I DO.

Q AND I KNOW YOU ALREADY ANSWERED IT, BUT JUST SO -- LET ME ASK YOU THIS, MR. STATEN, YOU OBVIOUSLY HAVE DENIED EVER TURNING AROUND AND TELLING YOUR BROTHER "TO GET THE

HAMMER", YOU DENY THAT?

A YES, I DO.

Q YOU DENY NODDING AT LIMEL SIMS, WEARING THE BLACK NORTHFACE---

A YES, I DO.

Q ---NODDING AT HIM AND HE RAISED THE GUN AND SHOOTS TWICE AT PHILLIP LEE, YOU DENY THAT?

A YES, I DO.

Q YOU SAW YOUR LITTLE BROTHER GET THAT GUN OUT OF THAT CAR, DIDN'T -- OUT OF THAT GALANT?

A NO, I DIDN'T.

Q NOW, THE SUNDAY NIGHT BEFORE, WHEN YOU STATED YOU WEREN'T HANGING AROUND WITH YOUR BROTHER THE SUNDAY BEFORE, WHEN I WAS TALKING TO YOU ABOUT THE TESTIMONY WITH PHILLIP LEE COMING IN AND TELLING HIS ROOMMATE THAT THE LITTLE BROTHER WITH THE DREADS PULLED A GUN ON ME. REMEMBER ME ASKING YOU ABOUT THAT?

A YEAH, I REMEMBER YOU ASKING ME THAT.

Q BECAUSE YOUR LITTLE BROTHER HAD CARRIED A GUN, DIDN'T HE?

A NO, HE DIDN'T.

Q YOU DENY THAT YOUR LITTLE BROTHER HAD A SILVER REVOLVER?

A YES, I DO DENY THAT.

Q NOW, MR. STATEN, YOU SAY THAT WHEN THE SHOTS WERE

FIRED, YOU AND YOUR -- YOU AND YOUR BROTHER WERE IN THE PARKING LOT, THE ASPHALT AREA?

A YES, WE WERE.

Q IN THIS AREA (INDICATING)?

A YEAH.

Q TALKING TO EACH OTHER?

A YEAH.

Q AND THEN YOU TAKE OFF RUNNING TOGETHER---

A YES.

Q ---WAS THAT YOUR TESTIMONY ON DIRECT?

A YES, IT WAS.

Q STAYED TOGETHER THE WHOLE TIME?

A YES, WE DID.

Q OKAY. IS THAT THE TRUTH?

A YES, THAT IS.

Q SO LET ME ASK YOU THIS, STATE'S EXHIBIT NUMBER FIFTY THAT'S IN EVIDENCE---

MR. GASSER: I AM REFERRING TO A PIECE OF EVIDENCE, YOUR HONOR.

Q SO WHEN YOUR LITTLE BROTHER TELLS THE POLICE, WHERE DID YOU GO AFTER THE SHOOTING? I RAN TO MY MOTHER'S BUILDING AT 2211---

MR. STRICKLER: I'LL OBJECT TO PITTING LIKE THAT.

MR. GASSER: I'M NOT PITTING. IT'S A PIECE OF EVIDENCE.

THE COURT: IT'S STILL PITTING.

MR. GASSER: I'M GONNA ASK HIM A QUESTION ON IT.

THE COURT: IT'S STILL PITTING THOUGH.

MR. STRICKLER: HE'S GONNA ASK HIM TO COMMENT -- HE'S GONNA ASK HIM TO COMMENT ON ANOTHER -- ANOTHER BIT OF TESTIMONY---

MR. GASSER: IT'S NOT TESTIMONY, YOUR HONOR, IT'S EVIDENCE. HE HASN'T TESTIFIED.

THE COURT: NO BUT IT'S STILL -- IT'S PITTING.

MR. GASSER: WELL, I WANT TO ASK HIM IF THIS IS---

THE COURT: IT'S PITTING IF YOU ASK HIM IF THAT'S TRUE OR NOT, THAT'S PITTING.

MR. GASSER: MAY WE APPROACH?

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE JURY AND THE COURT REPORTER, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

MR. GASSER: WELL, LET ME ASK HIM THIS WAY THEN.

Q IN YOUR DIRECT EXAMINATION TESTIMONY, I DIDN'T HEAR YOU SAY THAT YOU WENT OVER TO YOUR MOTHER'S HOUSE. DID YOU GO OVER TO YOUR MOTHER'S HOUSE?

A NO.

Q WHAT DID SHAKEEM DO WITH YOUR CAR?

A AFTER I MET UP WITH HIM, HE EXPLAINED IT TO ME. HE SAID HE HAD ABANDONED IT.

Q AND IT WAS YOUR CAR?

A EXCUSE ME?
Q IT WAS YOUR CAR?
A YES, IT WAS.
Q WELL, LET'S TALK ABOUT -- AND I'M -- I'M TRYING TO RUSH THROUGH THIS AS QUICK AS I CAN, MR. STATEN. I DON'T HAVE THAT MANY MORE TOPICS TO COVER.

TELL ME, MR. STATEN, ACCORDING TO YOUR TESTIMONY, WHEN YOU WALKED UP ON THE SIDEWALK, YOU WERE TRYING TO BREAK THINGS UP, IS THAT YOUR TESTIMONY?
A FIRST AND FOREMOST I WAS TRYING TO FIGURE OUT WHAT WAS GOING ON.
Q AND ONCE YOU FOUND OUT WHAT WAS GOING ON, YOU WANTED TO TRY AND BREAK THINGS UP? REMEMBER YOU WERE ASKING TONY KENNEDY TO GET YOUR MAN, THAT'S YOUR TESTIMONY?
A YEAH.
Q AND THEN YOU -- WHEN YOU NOTICED YOUR BROTHER AND YOUR COUSIN, ACCORDING TO YOUR TESTIMONY, YOU WENT TO THE MIDDLE OF THE PARKING LOT, THE SHOTS WERE FIRED, YOU HIT THE GROUND; CORRECT?
A THAT IS CORRECT.
Q OF COURSE, AT THAT POINT IN TIME YOU DON'T KNOW WHETHER YOU MAY BE A VICTIM OR NOT, ISN'T -- ACCORDING TO YOUR TESTIMONY?
A THAT IS CORRECT.
Q AND YOU LEAVE THE SCENE; CORRECT?

A THAT'S RIGHT.
Q AND SO TELL US PLEASE -- AND YOU FLAG DOWN A TRUCK; IS THAT CORRECT?
A YES, THAT IS.
Q OKAY. TELL US WHEN YOU -- WHEN DID YOU OR YOUR BROTHER STOP TO CALL 911?
A WE DIDN'T.
Q NOW YOU'RE A DJJ OFFICER, THAT'S YOUR TESTIMONY?
A YES.
Q YOU HAD NOTHING TO DO WITH ANY KIND OF ARGUMENTS, YOU OR YOUR BROTHER, THAT'S YOUR TESTIMONY?
A THAT IS CORRECT.
Q YOU IN FACT WERE A PEACEMAKER AND THAT'S YOUR TESTIMONY?
A THAT IS CORRECT.
Q YOU HAVE GONE TO GREAT LENGTHS TO TELL THIS JURY HOW YOU HAVE BEEN SHOT AND YOU HAVE BEEN STABBED AND SO YOU KNOW WHAT IT'S LIKE TO BE A VICTIM. REMEMBER YOU TELLING THIS JURY THAT?
A YES.
Q SO TELL US, PLEASE, WHEN YOU OR YOUR BROTHER STOPPED TO CALL 911 BECAUSE AS A CONCERNED CITIZEN AND OFFICER, YOU WERE WORRIED ABOUT ANYBODY GETTING SHOT.
A I WAS WORRIED ABOUT MYSELF GETTING SHOT.
Q SO YOU WERE WORRIED ABOUT YOURSELF GETTING SHOT AND

YOU'VE BEEN A VICTIM BEFORE---

A THAT'S RIGHT.

Q DID YOU CALL -- DID YOU WAIT UNTIL YOU GET BACK TO YOUR APARTMENT TO CALL THE POLICE THAT NIGHT?

A NO.

Q SO TELL THE -- TELL THE JURY WHEN ON MONDAY MORNING DID YOU EITHER GO TO THE BENEDICT COLLEGE PUBLIC -- DEPARTMENT OF PUBLIC SAFETY OR PICK UP THE PHONE AND CALL THE BENEDICT COLLEGE DEPARTMENT OF PUBLIC SAFETY OR THE COLUMBIA POLICE DEPARTMENT, SINCE YOU WERE WORRIED ABOUT YOUR SAFETY AND YOU WERE A WITNESS TO THIS EVENT. TELL US WHAT TIME YOU DID THAT MONDAY MORNING?

A EXCUSE ME, IF I WASN'T A WITNESS AND DIDN'T SEE WHO HAD THE GUN AND WHO FIRED THE SHOTS, WHAT WOULD I CALL THEM AND TELL THEM?

Q SO YOU NEVER CALLED THE POLICE ON MONDAY MORNING?

A NO, I DIDN'T.

Q YOU NEVER CALLED THE POLICE ON TUESDAY MORNING?

A NO.

Q YOU NEVER CALLED THE POLICE ON WEDNESDAY MORNING.

A NO.

Q DESPITE THE FACT THAT YOU SAW -- YOU REMEMBER READING ABOUT THIS IN THE NEWSPAPER, DIDN'T YOU, MR. STATEN?

A I DIDN'T READ ABOUT IT IN THE PAPER.

Q YOU DIDN'T SEE IT ON TV OR READ ABOUT IT IN THE PAPER?
A I SAW IT ON THE PAPER -- I MEAN, ON TV BUT I DIDN'T READ IT IN THE PAPER.
Q OKAY. AND SINCE YOU WERE HANGING OUT AT THE HASKILL STREET DORM THE WEEKS PRIOR TO THAT, DID YOU GO HANG OUT AT THE HASKILL STREET DORM PARKING LOT THE NEXT DAY?
A NO.
Q THE DAY AFTER THAT? WHY NOT?
A WHY WOULD I?
Q WELL, YOU BEEN HANGING THERE THE THREE WEEKS BEFORE AND YOU HAD NOTHING TO DO WITH THIS.
A THAT'S RIGHT. SO BECAUSE I DIDN'T HAVE SOMETHING TO DO WITH IT, I WOULD GO BACK?
Q WELL, WHAT WAS IT THAT MADE YOU -- IF THERE WAS ALMOST -- ALMOST AN ALTERCATION BETWEEN YOU AND YOUR BROTHER AND PHILLIP LEE ON FRIDAY NIGHT, YOU WENT BACK -- YOU WENT BACK ON MONDAY, DIDN'T YOU?
A BECAUSE THAT WAS RESOLVED RIGHT THEN AND THERE. AND I TOLD YOU THAT.
Q AND IF YOU AND YOUR BROTHER AND COUSIN HAD ABSOLUTELY NOTHING TO DO WITH PHILLIP LEE GETTING SHOT AND ANY OF PHILLIP LEE'S FRIENDS BEING INVOLVED IN THAT, THESE TWO OTHER DUDES THAT YOU HARDLY KNOW, THEN WHY DIDN'T YOU GO BACK TO THE SAME PLACE THAT YOU'VE BEEN HANGING OUT

THREE WEEKS?

A DID EVERYBODY THAT WAS OUT THERE THAT NIGHT GO BACK TO THAT SAME PLACE AND HANG OUT?

Q THAT'S NOT MY QUESTION.

A NO, BUT I'M ASKING YOU THAT.

Q WELL, YOU KNOW, THIS IS I GET TO ASK THE QUESTIONS.

A OKAY.

Q OKAY? IF YOU RESOLVED THE PROBLEM ON FRIDAY NIGHT WITH THE VICTIM.

A YES, I DID THAT.

Q AND YOU WENT BACK. IF YOU AND YOUR BROTHER AND COUSIN HAD NOTHING TO DO WITH THIS---

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q ---AND YOU HAD BEEN HANGING WITH YOUR FRIENDS FOR THREE WEEKS, WHY DIDN'T YOU GO BACK ON TUESDAY?

A FOR THREE WEEKS?

Q FOR SEVERAL WEEKS, SINCE THE BEGINNING OF JANUARY I THINK YOUR TESTIMONY WAS, FIFTEEN DAYS.

A I HAVEN'T BEEN UP THERE FIFTEEN DAYS CONSISTENTLY, YOU KNOW.

Q YOU'D BEEN UP THERE, I FIGURE -- I THINK YOUR TESTIMONY -- YOUR TESTIMONY WAS THREE TO THREE AND A HALF DAYS A WEEK---

A YEAH.

Q ---CORRECT? BECAUSE YOU HAD FRIENDS UP THERE AND

YOU LIKED HANGING OUT THERE AND YOU LIKED RAPPING WITH YOUR FRIENDS, I BELIEVE WAS YOUR TESTIMONY; CORRECT?

A (NO RESPONSE.)

Q SO IF Y'ALL HAD NOTHING TO DO WITH IT, THE PLACE THAT YOU ENJOYED GOING TO, YOU DIDN'T GO BACK ON TUESDAY, DID YOU?

A NO.

Q YOU DIDN'T -- DID YOU GO BACK ON WEDNESDAY?

A NO.

Q DID YOU GO BACK ON THURSDAY?

A NO, I DID NOT.

Q YOU DIDN'T GO BACK BECAUSE YOU KNEW -- YOU KNEW YOU WERE INVOLVED IN THE KILLING OF PHILLIP LEE, ISN'T THAT TRUE, MR. STATEN?

A THAT IS NOT TRUE.

Q SO YOU WEREN'T INVOLVED IN IT AT ALL AND YOU HAD FRIENDS THAT WERE HANGING THERE, IT WAS ROUTINE FOR YOU TO GO THERE, YET YOU JUST ALL OF A SUDDEN DECIDE NOT TO GO BACK. THAT'S YOUR TESTIMONY?

A A TRAGEDY TOOK PLACE THERE. WHY WOULD I GO BACK? I DIDN'T GO BACK TO THE SCENE OF THE CRIME WHERE I GOT SHOT.

Q SO A TRAGEDY TOOK PLACE THERE. THAT'S YOUR TESTIMONY?

A YES.

Q OKAY. AND YOU'VE BEEN SHOT AND STABBED BEFORE,

THAT'S YOUR TESTIMONY?

A YES, I HAVE.

Q AND YOU'RE AN OFFICER OF DJJ?

A YES.

Q THAT'S YOUR TESTIMONY?

A YES,

Q AND YET -- AND YOU SAW SOMETHING BEFOREHAND, SOMETHING BEFOREHAND THAT HAD SOMETHING TO DO WITH THE KILLING OF A HUMAN BEING, THAT'S YOUR TESTIMONY?

A WHAT DID I SEE, ARGUING?

Q DID YOU SEE -- WHAT YOU TOLD THIS JURY, YOU SAW PARTICIPANTS AND PEOPLE OUT THERE; ISN'T THAT TRUE?

A YEAH.

Q AND YOU NEVER CALLED THE POLICE TO TELL THEM ABOUT THAT INCIDENT, THAT'S YOUR TESTIMONY?

A YES, THAT IS.

Q BUT YOU DID CALL THE POLICE ON FRIDAY, DIDN'T YOU, MR. STATEN?

A ON FRIDAY?

Q ON FRIDAY THE 19TH OF JANUARY, YOU CALLED THE RICHLAND COUNTY SHERIFF'S DEPARTMENT, DIDN'T YOU?

A YEAH. I DON'T RECALL IF IT WAS FRIDAY BUT YEAH, I DID CALL THEM.

Q AND THERE'S NO QUESTION THAT DEPUTY DOWDY WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT CAME OUT -- YOU SAW

THE DEPUTY TESTIFY?
A YES, I DID.
Q OKAY. AND SO YOU -- YOU HAVE JUST -- WELL LET ME ASK YOU THIS, HAD YOU TALKED TO YOUR BROTHER DUSHUN ABOUT WHAT HE MIGHT HAVE SEEN?
A DID I TALK TO HIM ABOUT WHAT HE HAD SEEN?
Q I MEAN A PERSON JUST GOT KILLED IN THE PARKING LOT THAT YOU HANG OUT IN---
A OKAY.
Q ---CORRECT? WHEN YOU AND YOUR BROTHER DUSHUN WERE RUNNING FROM THIS GUY IN THE PICKUP TRUCK, I MEAN, DID YOU EVER, YOU KNOW, TALK TO HIM LIKE, "MAN, DUSHUN, IS THAT UNBELIEVABLE? DID YOU SEE WHAT HAPPENED?"
DID YOU EVER HAVE A CONVERSATION LIKE THAT?
A WE DIDN'T HAVE A DISCUSSION. WE RAN UNTIL WE CAUGHT A RIDE.
Q AND LATER ON WHEN YOU GOT BACK TO THE APARTMENT, DID YOU EVER HAVE A DISCUSSION WITH YOUR BROTHER ABOUT -- I MEAN, SOME GUY JUST GOT KILLED IN THE PARKING LOT. IN FACT, YOU EVEN KNEW THE GUY. DID YOU EVER HAVE A DISCUSSION WITH HIM ABOUT IT?
A YEAH.
Q DID HE TELL YOU WHAT HE SAW?
A VAGUELY.
Q WELL DID YOU CALL THE POLICE THEN?

A NO.
Q BUT YOU DID CALL THEM ON THE 19TH?
A YES, I DID.
Q IN FACT, WHEN YOU CALLED -- THEY DIDN'T JUST SHOW UP AT YOUR APARTMENT. THEY SHOWED UP AT YOUR APARTMENT BECAUSE YOU CALLED LAW ENFORCEMENT; CORRECT, MR. STATEN?
A YES, I DID.
Q AND THEY SHOW UP AT YOUR APARTMENT AND DID YOU TELL THE POLICE OFFICER AT THAT TIME, SINCE THIS INCIDENT -- THE BENEDICT COLLEGE SHOOTING HAD BEEN ON TV THAT YOU SAID YOU'D SEEN. DID YOU OR YOUR BROTHER IN YOUR PRESENCE, DID YOU TELL THE POLICE OFFICER, YOU KNOW, "WE WERE OUT THERE WHEN THAT HAPPENED. WE'VE GOT SOME INFORMATION FOR YOU. YOU KNOW, THERE WAS TWO DUDES OUT THERE ARGUING WITH THE VICTIM. ONE WAS WEARING A BLACK NORTHFACE JACKET."
DID YOU EVER SAY ANYTHING ABOUT THAT?
A WHEN I CALLED THE POLICE IT WAS ME AND SHAKEEM IN THE APARTMENT AND WE DID START TO TELL THEM ABOUT IT AND THEY STOPPED US, SAID, "SAY NO MORE. WE GONNA GET IN TOUCH WITH THE OFFICERS ON THE CASE."
AND THAT'S WHY THEY CAME BACK ANOTHER DAY AND ONE OF THE OFFICERS THAT WAS ON THE CASE DID SHOW UP AT MY APARTMENT.
Q SO -- SO IT'S YOUR TESTIMONY NOW THAT YOU DID TRY AND TALK TO THE POLICE ABOUT IT?

A IT'S NOT MY TESTIMONY NOW. YOU JUST ASKED ME THIS QUESTION.
Q THAT'S WHAT I'M ASKING YOU.
A OKAY.
Q AND YOU DID CALL THE POLICE FOR A REASON; CORRECT?
A YES, I DID.
Q SO YOU CALLED THE POLICE TO REPORT YOUR CAR STOLEN?
A YES, I DID.
Q SO -- WHEN THE POLICE OFFICER TOOK THIS INCIDENT REPORT, DID HE GIVE YOU A COPY OF THE INCIDENT REPORT THAT YOU CALLED HIM -- CALLED HIM ON?
A I DON'T RECALL.
Q OKAY. BUT YOU GAVE HIM ENOUGH INFORMATION BECAUSE HE WAS ABLE TO GET THE VIN NUMBER. YOU GAVE HIM THE VIN NUMBER ON THE VEHICLE; CORRECT?
A YEAH.
Q OKAY. SO YOU CALLED THE RICHLAND COUNTY SHERIFF'S DEPARTMENT AND YOU EVEN TELL THEM SPECIFICALLY THAT YOUR CAR WAS STOLEN AT 7:00 ON JANUARY THE 15TH, MONDAY NIGHT, 2001. YOU TELL THEM THAT; CORRECT?
A YES, I DID.
Q MR. STATEN, YOU SAW ON THE NEWS THAT THEY WERE LOOKING FOR A GREEN GALANT AND THE PEOPLE THAT FLED IN THE GREEN GALANT AND YOU WERE TRYING TO THROW THE POLICE OFF; ISN'T THAT TRUE?

A NO.
Q THEN CAN YOU EXPLAIN -- IF YOU HAD NOTHING TO DO WITH THIS, IF YOU WERE ALMOST A VICTIM YOURSELF, IF YOU WERE A PEACEMAKER, IF YOU AND YOUR BROTHER HAD SOME INFORMATION ABOUT THIS, WHY IN THE WORLD, AS AN OFFICER OF DJJ, WOULD YOU CALL THE SHERIFF'S DEPARTMENT AND FILE A FALSE POLICE REPORT?
A BECAUSE THE CAR SHOULDN'T HAVE BEEN THERE IN THE FIRST PLACE AND IT WASN'T INSURED LIKE I SPECIFIED IN MY EARLIER TESTIMONY.
Q SO YOU'RE FILING A FALSE POLICE REPORT AND JUST HAPPENED TO PICK 7:00 AT NIGHT---
A RIGHT.
Q ---TWO HOURS BEFORE PHILLIP LEE IS KILLED, THAT THE CAR WAS STOLEN? SIMPLY BECAUSE IT WASN'T INSURED?
A YEAH.
Q YOU KNEW WHAT TIME THAT INCIDENT TOOK PLACE AND YOU KNEW WHAT TIME YOU WERE INVOLVED IN IT; ISN'T THAT TRUE, MR. STATEN?
A I HAD NO INVOLVEMENT IN IT.
Q AND YOU OR YOUR COUSINS OR SOMEBODY AT YOUR DISPOSAL DITCHED THAT CAR ON FARMING CREEK ROAD AND YOU CALLED THE POLICE TO MAKE IT WAS STOLEN TWO HOURS BEFORE THE INCIDENT SO THERE'S NO WAY YOU COULD BE CONNECTED TO THIS CRIME; ISN'T THAT TRUE?

A I DIDN'T DITCH THE CAR. THAT IS NOT TRUE.
Q THE KEYS THAT WERE FOUND IN YOUR GIRLFRIEND'S CAR?
A YEAH.
Q WHO'S KEYS ARE THESE?
A THOSE ARE MY KEYS.
Q TO WHAT CAR?
A THE GALANT.
Q BUT YOU DIDN'T DITCH THE CAR AND YOU DON'T KNOW WHO DITCHED THE CAR AND THESE KEYS TO THE CAR JUST HAPPENED TO BE IN YOUR GIRLFRIEND'S---
A THERE'S MORE THAN ONE SET OF KEYS TO THAT CAR.
Q MR. STATEN, WHEN THAT POLICE OFFICER WAS THERE TAKING THIS STOLEN CAR REPORT, AND YOU WOULD AGREE WITH ME IN THE WHOLE GRAND SCHEME OF THINGS, A STOLEN CAR ISN'T ALL THAT IMPORTANT, YOU WOULD AGREE WITH ME ON THAT STATEMENT, WOULD YOU NOT?
A YEAH.
Q WHEN THAT POLICE OFFICER WAS TAKING DOWN THIS REPORT, I MEAN HE MADE AN OFFICIAL REPORT BECAUSE HE BELIEVED WHAT YOU WERE TELLING HIM? HE DIDN'T JUST TURN AROUND AND WALK OUT THE DOOR AND SAY, "I'M NOT TAKING A REPORT FROM YOU". HE TOOK THE REPORT AND THE INFORMATION THAT YOU TOLD HIM; ISN'T THAT TRUE?
A YEAH.
Q AND YOU'VE TESTIFIED IN FRONT OF THIS JURY, AND

YOU'RE FACING MURDER AND LYNCHING IN THE FIRST DEGREE?
A YES, I AM.
Q YOU DIDN'T TELL THE TRUTH IN SOMETHING AS TRIVIAL AS A STOLEN CAR REPORT, TRUE?
A WHAT DOES THE CAR HAVE TO DO WITH ME BEING ON TRIAL FOR MURDER AND LYNCHING?
Q YOU DIDN'T TELL THE TRUTH ON SOMETHING AS TRIVIAL AS A STOLEN CAR REPORT, TRUE?
A SO THAT MAKES ME A MURDERER?
Q YOU DIDN'T TELL THE TRUTH ON SOMETHING AS TRIVIAL AS A STOLEN CAR REPORT, YES OR NO, MR. STATEN?
A NO, I DIDN'T.
Q YET SOMETHING AS IMPORTANT AS A JURY DETERMINING THE FACTS AS TO WHO DID WHAT AND WHO SAW WHAT, YOU WANT THEM TO BELIEVE YOUR TESTIMONY NOW?
A YES, BECAUSE IT IS THE TRUTH.
Q DID YOU OR DID YOUR BROTHER IN YOUR PRESENCE EVER CALL CRIME STOPPERS OR MAKE SOME SORT OF ANONYMOUS TIP TO THE POLICE---
A NO.
Q ---WITH INFORMATION YOU HAD?
A NO.
Q WHEN YOU WERE BEING INVESTIGATED BY -- OR INTERVIEWED BY INVESTIGATOR MEAD, THERE'S NO QUESTION HE ADVISED YOU OF YOUR RIGHTS; IS THAT CORRECT, MR. STATEN?

A YES, HE DID.
Q AND, OF COURSE, YOU'RE AN INTELLIGENT YOUNG MAN, YOU KNOW THAT YOU DIDN'T WANT -- DIDN'T HAVE TO TALK TO THE COPS, YOU DIDN'T HAVE TO. YOU UNDERSTOOD THAT EVEN BEFORE HE ADVISED YOU OF YOUR RIGHTS, DIDN'T YOU?
A YEAH.
Q OKAY. IN FACT, DIRECT EXAMINATION, YOU DIDN'T WANT TO PUT ANYTHING IN WRITING AND MR. -- INVESTIGATOR MEAD DIDN'T FORCE YOU TO PUT ANYTHING IN WRITING, TRUE?
A THAT'S RIGHT.
Q YOU SAID THAT WHEN YOU FIRST SAT DOWN, HE ADVISED YOU OF YOUR RIGHTS?
A NO, I DIDN'T SAY THAT.
Q NO, I'M SORRY. I WAS JUST PREFACING A QUESTION.
A OH, OKAY.
Q WHEN HE ADVISED YOU OF HIS (SIC) RIGHTS AND THEN YOU STARTED THIS DISCUSSION, YOU ACKNOWLEDGE TO THE JURY THAT YOU DIDN'T TELL THE TRUTH FROM THE GET-GO. YOU SAID THAT YOU WEREN'T EVEN OUT AT BENEDICT COLLEGE.
A THAT'S RIGHT.
Q AND THIS ALL THE TIME BEING WHERE YOU WERE ALMOST A VICTIM IN THIS CRIME; CORRECT?
A THAT'S RIGHT.
Q AND ACTUALLY IT WASN'T UNTIL INVESTIGATOR MEAD TOLD YOU THAT YOUR BROTHER AND SOME OTHER WITNESSES PLACED YOU

AT THE SCENE THAT YOU THEN CAME AROUND AND ADMITTED TO HIM THAT YOU WERE AT THE SCENE; ISN'T THAT TRUE?

A HE ASKED ME THE QUESTION, LEFT, CAME BACK AND THEN MADE THAT STATEMENT.

Q SO IT'S TRUE, THAT UNTIL YOU WERE CONFRONTED FROM OTHER WITNESSES INCLUDING YOUR OWN BROTHER THAT YOU WERE AT THE SCENE, YOU HAD NOT ADMITTED BEING AT THE SCENE? YOU HAD NOT TOLD THE TRUTH?

A THAT'S RIGHT.

(PAUSE.)

Q WHEN -- WHEN YOU TOLD THE INVESTIGATOR THAT YOU YOURSELF, ACCORDING TO YOUR TESTIMONY, HAD NEVER HAD ANY RUN-INS WITH THE VICTIM IN THIS CASE, PHILLIP LEE, HE WROTE IT DOWN, DIDN'T HE? I MEAN, YOU'VE SEEN HIS NOTES OR AT LEAST HEARD HIM TESTIFY OR HEARD YOU LAWYER---

A I HEARD HIM TESTIFY, YEAH.

Q OKAY. AND YOU -- YOUR LAWYERS HAD A COPY OF THIS, OF ALL HIS CASE NOTES. YOU UNDERSTAND WE'VE GOT TO TURN OVER -- YOU KNOW THAT.

A YEAH.

Q SO WHEN HE WAS SAYING THINGS ABOUT YOU GOING TO THE BANK OF AMERICA AND YOU RUNNING FROM THE SCENE, NOT DRIVING AWAY FROM THE GALANT, INVESTIGATOR MEAD WROTE THAT DOWN, YOUR VERSION OF THE EVENTS---

A THAT'S THE TRUTH, NOT MY VERSION. THAT'S THE TRUTH.

Q WHAT YOU SAY AND CLAIM TO BE THE TRUTH, INVESTIGATOR MEAD WROTE DOWN ON JANUARY THE 23RD. THAT'S HOW WE HAVE IT NOW. YOU UNDERSTAND THAT, DON'T YOU?

A YEAH, I UNDERSTAND THAT.

Q SO WHEN HE WAS WRITING DOWN WHAT YOU WERE TELLING HIM ON JANUARY THE 23RD, AFTER YOU FINALLY ADMITTED TO BEING THERE, HE WROTE IT DOWN AND YOU TESTIFIED TO PART OF THAT IN FRONT OF THIS JURY; CORRECT?

A YES.

Q HE DIDN'T THROW THAT PORTION OF IT IN THE GARBAGE CAN IN FRONT OF YOU SAYING, I'M NOT GOING TO ACCEPT THAT ---

A AND WHAT PORTION WOULD THAT BE?

Q THE PORTION OF IT YOU DENY -- YOU SAYING YOU RAN AWAY FROM THE SCENE AND DIDN'T DRIVE AWAY IN THE GREEN GALANT. THE PORTION OF YOU SAYING -- OF HIM WRITING DOWN YOU DIDN'T HAVE ANY PRIOR ARGUMENTS WITH THE VICTIM.

HE WROTE ALL THAT DOWN; CORRECT?

A YES.

Q AND THAT'S WHAT YOU TESTIFIED TO THIS JURY; CORRECT?

A YES.

Q YET YOU ARE TELLING THIS JURY THAT YOU FELT -- YOU FELT SOME -- SOME -- WHEN YOU WERE BEING INTERVIEWED BY INVESTIGATOR MEAD, THAT YOU WERE UNCOMFORTABLE---

A DID YOU EVER HEAR ME SAY THAT UP THERE?

Q I'M SORRY? YOU SAY WHAT YOU SAID.
A I DIDN'T SAY I WAS---
Q I WAS CHARACTERIZING---
A ---UNCOMFORTABLE.
Q ---IT AS UNCOMFORTABLE---
A THE QUESTION THAT WAS ASKED WAS HOW DID THE INTERVIEW GO. DID I EVER GET ANGRY OR DID HE EVER GET ANGRY? AND I SAID, "YES, HE DID AND YES, I DID."
Q BUT YOU WENT FURTHER THAN THAT, DID YOU NOT, MR. STANTON? YOU TALKED ABOUT HOW YOU FELT. MR. STRICKLER WAS ASKING YOU ABOUT HOW YOU FELT. AND DIDN'T YOU USE THE WORDS CONFUSED? OR USE THE WORDS THAT YOU -- HOW DID YOU FEEL?
A BEFORE I COULD GET IT OUT YOU OBJECT.
Q I'M TALKING ABOUT -- I'M NOT TALKING ABOUT THAT. HE WAS ASKING YOU HOW YOU FELT ABOUT SOMETHING TOTALLY DIFFERENT.

WHEN YOU WERE BEING INTERVIEWED BY INVESTIGATOR MEAD, HE TREATED YOU WITH RESPECT, DID HE NOT?
A FOR THE MOST PART.
Q OKAY. AND YOU INDICATED THAT EVEN THOUGH HE WAS WRITING DOWN WHAT YOU'VE TOLD -- SOME OF WHAT YOU'VE TOLD THIS JURY, HE WROTE DOWN, YOU INDICATED THAT YOU WERE AFRAID -- YOU A DJJ OFFICER, WHO HAD ABSOLUTELY NOTHING TO DO WITH THIS CASE ACCORDING TO YOUR TESTIMONY, YOU WERE

AFRAID TO PUT SOMETHING DOWN IN WRITING?

A I WASN'T AFRAID. I JUST REFUSED TO. I DIDN'T SAY I WAS AFRAID TO. I SAID I WOULDN'T PUT IT IN WRITING BECAUSE I DIDN'T WANT MY WORDS TWISTED AND USED AGAINST ME.

Q YOU DIDN'T WANT INVESTIGATOR MEAD TO TWIST WORDS AGAINST YOU AND THAT'S WHY YOU DIDN'T PUT IT IN WRITING?

A THAT'S RIGHT.

Q YET INVESTIGATOR MEAD PUT DOWN THE INFORMATION -- SOME OF THE INFORMATION THAT---

A THE INFORMATION THAT I GAVE HIM VERBALLY, YEAH, HE DID PUT IT DOWN IN HIS OWN WORDS. HE DID THAT.

Q AND SOME OF THEM HAVE BEEN THE SAME WORDS YOU TOLD THIS JURY?

A YEAH, SOME OF THEM.

Q WELL, IS THERE ANYTHING IN HERE THAT HE PUT DOWN AND YOU HEARD HIM TESTIFY TO YOU DISAGREE WITH, MR. STATEN?

A I CAN'T REMEMBER HIS TESTIMONY VERBATIM. I CAN'T.

Q SO WHEN YOU HAVE SAT IN THE COURTROOM AND WATCHED THIS INVESTIGATOR TAKE THAT STAND AND SWEAR TO THE SAME OATH THAT YOU SWORE TO---

MR. TAYLOR: OBJECTION, PITTING, YOUR HONOR.

MR. GASSER: I'M NOT PITTING.

THE COURT: THAT'S NOT A PIT BUT DON'T -- YOU CAN'T -- DON'T ASK THAT QUESTION.

Q THE QUESTION I'M ASKING IS NOT SOMETHING INVESTIGATOR MEAD TALKED ABOUT, EVERYTHING IN HIS TESTIMONY. I'M TALKING ABOUT WHAT YOU SAID, WHAT YOU SAID.

HE TESTIFIED TO WHAT YOU TOLD HIM, DID HE NOT?

A YEAH.

Q THAT'S THE ONLY POINT I'M TRYING TO MAKE. JUST A COUPLE OF MORE QUESTIONS.

(PAUSE.)

Q WHY WAS THERE A MAP IN YOUR GIRLFRIEND'S CAR FOLDED TO THE SECTION OF -- WHY DID YOU HAVE A MAP IN YOUR GIRLFRIEND'S CAR FOLDED TO THE SECTION OF FARMING CREEK ROAD?

A I DON'T KNOW IF IT WAS FOLDED TO THAT SECTION. BUT AS FAR AS THE MAP GOES, I PURCHASED THAT ALONG WITH THE PRINTOUT OF LOCATIONS OF VACANCY APARTMENTS AND HOUSES FROM RENT MART.

Q SO IF IT WAS FOLDED TO THE SECTION OF FARMING CREEK ROAD, THAT WAS JUST A COINCIDENCE?

A WHAT DO YOU MEAN? LIKE I JUST SAID, I DIDN'T KNOW WHAT SECTION IT WAS FOLDED TO.

Q SO IT COULD HAVE BEEN FOLDED TO THE SECTION OF FARMING CREEK ROAD, ACCORDING TO YOUR -- BECAUSE YOU DON'T KNOW WHERE IT WAS FOLDED?

A EXACTLY. SO I CAN'T AGREE TO THAT.

Q SO YOU'RE NOT DENYING THAT IT WAS FOLDED TO FARMING CREEK ROAD? YOU DON'T KNOW?

A I DON'T.

MR. GASSER: BEG THE COURT'S INDULGENCE.

(PAUSE.)

Q ON THE SECOND PAGE OF THE REPORT THAT YOU GAVE THE DEPUTY WHEN HE CAME OUT, WHEN YOU FILED THIS STOLEN CAR REPORT, MR. STATEN. YOU TOLD THE DEPUTY THAT YOU HEARD THAT A SIMILAR VEHICLE WAS INVOLVED IN A HOMICIDE---

A NO---

Q DO YOU REMEMBER TELLING THE DEPUTY THAT?

A I DON'T RECALL SAYING THAT AT ALL.

Q YOU DON'T RECALL TELLING HIM, I HEARD A SIMILAR VEHICLE MAY HAVE BEEN INVOLVED IN A HOMICIDE? THE VICTIM -- YOU WERE THE VICTIM ON THIS REPORT, WERE YOU NOT?

A YES.

Q "HE HEARD A SIMILAR VEHICLE WAS INVOLVED IN A HOMICIDE", VICTIM STATED. "THOUGHT HIS VEHICLE WAS REPOSSESSED POSSIBLY." YOU DON'T REMEMBER TALKING ABOUT THAT? IT'S EITHER THE CAR WAS STOLEN AT 7:00 ACCORDING TO YOU WHICH YOU'VE ALREADY ADMITTED WASN'T TRUE.

A THAT'S RIGHT.

Q AND YOU ALSO TOLD THE DEPUTY THAT THE CAR MAY HAVE BEEN INVOLVED IN A HOMICIDE, DID YOU NOT?

A I DON'T RECALL TELLING HIM THAT AT ALL.

Q YOU DON'T REMEMBER THAT?

A NO.

(PAUSE.)

MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: MR. STRICKLER, DO YOU HAVE ANYTHING?

MR. STRICKLER: JUST -- ABOUT FIVE QUESTIONS.

REDIRECT EXAMINATION BY MR. STRICKLER:

Q LUCIUS, MR. GASSER ASKED YOU ABOUT LEARNING ABOUT WHAT HAPPENED TO THE CAR AND YOU SAID THAT SHAKEEM TOLD YOU HE HAD ABANDONED THE CAR?

A YES.

Q DID HE TELL YOU WHERE HE HAD ABANDONED THE CAR?

A HE SAID HE LEFT IT IN SOME APARTMENTS A FEW BLOCKS FROM BENEDICT COLLEGE WITH KEYS IN IT.

Q OKAY. NOW, HE WENT ON AND ON ABOUT NOT GOING TO THE POLICE EVEN THOUGH YOU DIDN'T HAVE ANYTHING TO DO WITH IT. YOUR TESTIMONY IS YOU DIDN'T HAVE ANYTHING TO DO WITH IT?

A AND I DIDN'T.

Q OKAY. WHAT ARE CHARGED WITH?

A MURDER.

Q WHAT ELSE?

A LYNCHING IN THE FIRST DEGREE.

Q AND WHEN YOU DECIDED -- HE TALKED WITH YOU ABOUT TELLING -- NOT TELLING MR. MEAD THE TRUTH TO BEGIN WITH AND THEN YOU GAVE YOUR STATEMENT AND YOU SAY THAT YOUR

STATEMENT IS -- THAT YOU GAVE HIM IS THE TRUTH?

A YES, IT IS.

Q YOU'VE TESTIFIED TO THAT UP HERE?

A YES, I HAVE.

Q AND WHAT ARE YOU CHARGED WITH?

A MURDER.

Q OKAY. HOW MANY SETS OF KEYS ARE THERE FOR THAT CAR, THE GALANT?

A THREE.

Q THREE. OKAY. AND YOU AGREE WITH MR. GASSER THAT MR. MEAD WROTE DOWN MOST OF WHAT YOU TOLD HIM---

A YES.

Q ---RIGHT? OKAY. DID HE WRITE DOWN NECESSARILY EVERYTHING YOU TOLD HIM?

A NO, HE DIDN'T.

Q OKAY. HAVE YOU SUPPLIED MORE DETAILS HERE THAN WHAT YOU WROTE DOWN?

A YES, I HAVE.

Q ALL RIGHT. ARE YOU GUILTY -- ARE YOU GUILTY OF BEING INVOLVED IN THESE INCIDENTS AT ALL?

A NO, I'M NOT.

MR. STRICKLER: ALL RIGHT. THAT'S ALL I HAVE.

THE COURT: ALL RIGHT. YOU CAN COME DOWN.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

THE COURT: CALL YOUR -- ARE THERE ANY MORE

WITNESSES, MR. STRICKLER?

MR. STRICKLER: YES, SIR. THE DEFENSE WOULD CALL PHIL RUGGLES.

THE COURT: WHO?

MR. STRICKLER: RUGGLES, R-U-G-G-L-E-S.

(**PHILLIP ALAN RUGGLES**, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT THERE, SIR. STATE YOUR FULL NAME FOR THE RECORD, PLEASE, SPELL YOU LAST.

MR. RUGGLES: PHILLIP ALAN RUGGLES -- R-U-DOUBLE G-L-E-S.

DIRECT EXAMINATION BY MR. STRICKLER:

Q GOOD AFTERNOON, MR. RUGGLES. MY NAME IS DOUG STRICKLER. YOU'VE NEVER MET ME BEFORE, HAVE YOU?

A NO.

Q DON'T KNOW ME FROM ADAM'S HOUSECAT; RIGHT? WERE YOU SUBPOENAED HERE BY MR. TAYLOR?

A YES, I WAS.

Q OKAY. DID YOU BRING SOME DOCUMENTS WITH YOU---

A YES, I DID.

Q ---AS A RESULT OF THAT SUBPOENA? LET ME ASK YOU THIS, MR. RUGGLES, WE'RE GONNA GO THROUGH THERE AND TRY TO GET YOU OUT OF HERE---

A OKAY.

Q ---AS SOON AS POSSIBLE. BY WHOM ARE YOU EMPLOYED?

A RENT MART.
Q AND IN WHAT CAPACITY ARE YOU EMPLOYED BY RENT MART ?
A AS THE OWNER AND MANAGER.
Q WHAT'S THE NATURE OF THAT BUSINESS?
A RELOCATION CENTER FOR HOUSES, APARTMENTS.
Q OKAY. AND AS PART OF THAT BUSINESS, WHAT SORT OF SERVICES DO YOU PROVIDE?
A WE PROVIDE A SELECTION OF PLACES FOR OUR CLIENTS TO CHOOSE FROM ON A DAILY BASIS.
Q OKAY. AND IN THAT BUSINESS, DID YOU HAVE OCCASION TO COME IN CONTACT WITH LUCIUS STATEN?
A YES, I DID.
Q OKAY. HAVE YOU BROUGHT IN DOCUMENTS PURSUANT TO SUBPOENA RELATING TO WHEN YOU CAME IN CONTACT WITH MR. STATEN?
A YES, WHEN OUR OFFICE WAS IN CONTACT HIM.
Q OKAY. LET ME SHOW YOU THIS AND ASK YOU IF THAT IS ---
A YES---
Q ---A COPY OF THAT?
A YEAH, THAT'S A COPY OF THAT. THIS IS THE ORIGINAL.
Q YOU HAVE THE ORIGINAL RIGHT THERE? VERY GOOD. CAN YOU TELL US, PLEASE---
MR. STRICKLER: FIRST OF ALL, MR. GASSER, I'M GONNA MOVE TO INTRODUCE THIS AFTER ESTABLISHING FURTHER

FOUNDATION PURSUANT TO THE UNIFORM BUSINESS RECORDS ACT.

MR. GASSER: HE DOESN'T HAVE TO ESTABLISH FOUNDATION. I TRUST HIM.

THE COURT: OKAY.

MR. STRICKLER: THEN I'LL JUST MARK IT RIGHT AWAY ---

THE COURT: ALL RIGHT.

COURT REPORTER: DEFENDANT LUCIUS STATEN'S THREE IN EVIDENCE.

(DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER THREE, RENT MART RECORDS, IS NOW ENTERED INTO EVIDENCE WITHOUT OBJECTION.)

Q SO YOU DON'T HAVE TO LEAVE YOUR ORIGINAL HERE, I MAY HAVE YOU JUST REFERENCE THIS COPY. OKAY. AND YOU WOULD AGREE THE COPY IS AN---

A YES.

Q ---ACCURATE COPY OF THE ORIGINAL? OKAY. AND WHEN DOES THAT COPY INDICATE -- OR THAT DOCUMENT INDICATE THAT YOU HAD CONTACT WITH MR. STATEN?

A ON JANUARY 17TH AT 10:30.

Q JANUARY 17TH OF WHAT YEAR?

A 2001.

Q 2001. AND WHAT SORT OF CONTACT DID YOU HAVE WITH HIM? IS THIS REFLECTED ON THE DOCUMENT?

A BASICALLY HE GOT REGISTERED ON THAT DAY. HE WAS

LOOKING FOR A THREE BEDROOM HOUSE IN THE NORTHEAST OR IN THE IRMO-ST. ANDREWS AREA.

Q NORTHEAST OR IRMO-ST. ANDREWS?

A RIGHT.

Q HOW CAN YOU TELL IT WAS IN THE NORTHEAST OR IRMO-ST. ANDREWS AREA?

A WELL, WE HAVE THESE LETTER CODES THAT DICTATE. YOU SEE "C" WOULD DICTATE THAT THE NORTHEAST UP TO THE SPRING VALLEY AREA. IT WOULD BE UP AROUND COLUMBIA MALL. AND ALSO IN THE FOREST ACRES AREA. AREA "E" WOULD BE THE IRMO-ST. ANDREWS-BALLENTINE AREAS.

Q OKAY. AND THOSE ARE JUST YOUR INTERNAL CODES? THAT'S REFLECTED---

A YES.

Q ---ON THIS LINE IN THE MIDDLE OF THE DOCUMENT?

A YEAH.

Q OKAY.

A YES.

Q NOW, THERE'S A FEE INDICATED OF $69.00---

A YES, SIR.

Q ---FOR YOUR SERVICES?

A CORRECT.

Q THERE'S AN ADDITIONAL AMOUNT---

A $3.00 FOR A MAP.

Q THAT'S FOR A MAP?

A YES, SIR.
Q OKAY. LET ME SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT NUMBER FIFTY-TWO FOR I.D. IS IT ANY KIND OF MAP LIKE THAT THAT YOU SUPPLY?
A NO. ACTUALLY---
Q I UNDERSTAND IT'S NOT EXACTLY---
A YEAH. ACTUALLY I BROUGHT ONE HERE, THE EXACT MAP.
Q OKAY. (PAUSE.) THIS WOULD HAVE BEEN THE TYPE OF MAP YOU SUPPLIED?
A YES.

MR. STRICKLER: YOUR HONOR, I WOULD MOVE TO INTRODUCE THIS.

MR. GASSER: NO OBJECTION.

MR. TAYLOR: NO OBJECTION.

THE COURT: IT'S IN.

COURT REPORTER: LUCIUS STATEN'S DEFENDANT'S FOUR.

(DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER FOUR, RENT MART MAP, IS NOW ENTERED INTO EVIDENCE WITHOUT OBJECTION.)

MR. STRICKLER: THANK YOU VERY MUCH, MA'AM.

Q AND SIR, ONCE AGAIN, THIS CONTACT WAS ON JANUARY 17TH OF 2001 AT 10:30 IN THE MORNING.
A CORRECT.

MR. STRICKLER: THANK YOU VERY MUCH, SIR. THAT'S ALL I HAVE. ANSWER ANY QUESTIONS EITHER OF THESE

ATTORNEYS MAY HAVE FOR YOU.

THE COURT: MR. TAYLOR, YOU GOT ANY QUESTIONS?

MR. TAYLOR: NONE, SIR.

THE COURT: ALL RIGHT. MR. GASSER?

MR. GASSER: NO, SIR.

THE COURT: ALL RIGHT. YOU CAN COME DOWN AND YOU'RE FREE TO GO.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

MR. STRICKLER: THANK YOU VERY MUCH. YOUR HONOR, THE DEFENSE WOULD CALL, LET ME SEE HERE, DAVID MacDOUGALL.

(**DAVID B. MacDOUGALL,** HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT THERE, SIR. STATE YOUR FULL NAME FOR THE RECORD.

MR. MacDOUGALL: DAVID B. MacDOUGALL, SPELLED M-a-c-CAPITAL D-O-U-G-A-L-L.

DIRECT EXAMINATION BY MR. STRICKLER:

Q MR. MacDOUGALL, WHAT IS THE NATURE OF THE WORK THAT YOU DO?

A I'M A PRIVATE INVESTIGATOR HERE IN COLUMBIA, HAVE BEEN FOR TWENTY-THREE YEARS.

Q TWENTY-THREE YEARS. AND IN THAT CAPACITY HAVE YOU BEEN EMPLOYED BY MR. TAYLOR IN RELATION TO THIS PARTICULAR CASE?

A YES, I HAVE.

Q OKAY. AND SPECIFICALLY, IN YOUR CAPACITY AS PRIVATE INVESTIGATOR, DID MR. TAYLOR ASK YOU TO ATTEMPT TO LOCATE ANY PARTICULAR VEHICLE?

A HE DID. BACK IN THE SPRING, I BELIEVE IT WAS, OF LAST YEAR, 2001, AT HIS DIRECTION I CANVASSED THE AREA EARLY IN THE MORNING AROUND BENEDICT COLLEGE.

Q AROUND BENEDICT COLLEGE?

A IN PARTICULAR LOOKING AT THE DORMITORIES, IN ANY OF THE STUDENT LIVING AREAS, TRYING TO FIND A PARTICULAR VEHICLE THAT MR. TAYLOR HAD ASKED ME TO LOOK FOR.

Q WHAT TYPE OF VEHICLE WERE YOU LOOKING FOR?

A IT WAS A DARK BLUE OLDER MODEL BLAZER WITH TWO DOORS. AND THE THING THAT MADE IT STICK OUT IN MY MIND WAS I HAVE A FOUR DOOR BLAZER AND I'M VERY FAMILIAR WITH THEM. A TWO DOOR BLAZER IS RELATIVELY UNUSUAL.

Q OKAY. WERE YOU ABLE TO LOCATE ANY SUCH VEHICLE OR VEHICLES?

MR. GASSER: YOUR HONOR, MAY WE APPROACH?

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE JURY AND THE COURT REPORTER, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

MR. STRICKLER: THANK YOU, YOUR HONOR.

Q OKAY. SO, AT THE DIRECTION OF MR. TAYLOR -- FIRST, I HAVE NOT EMPLOYED YOU ON THIS CASE---

A NO.

Q ---IS THAT CORRECT?
A NO, YOU HAVE NOT.
Q WE'VE MET IN THE PAST, OVER THE COURSE OF THE YEARS, BUT I'VE HAD NOTHING TO DO WITH YOU AS FAR AS EMPLOYMENT?
A THAT'S CORRECT.
Q YOU'RE WORKING WITH MR. TAYLOR IN RELATION TO DUSHUN STATEN---
A THAT'S CORRECT.
Q NOW, AT HIS DIRECTION YOU SEARCHED FOR A VEHICLE. WERE YOU ABLE TO FIND ANY SUCH VEHICLE OR VEHICLES IN THE AREA THAT YOU DESCRIBED?
A I FOUND ACTUALLY ABOUT THREE OR FOUR THAT WERE CLOSE BUT I FOUND ONE THAT WAS EXACTLY RIGHT. IT WAS A DARK, VERY DARK, DARK BLUE, NEAR BLACK EVEN, VERY DARK COLOR TWO DOOR BLAZER WHICH HAPPENED TO BE PARKED IN ONE OF THE RESIDENCE DORMS AT ALLEN UNIVERSITY. AND THIS WOULD HAVE BEEN AT ABOUT DAYLIGHT ON THAT PARTICULAR MORNING, VERY EARLY IN THE MORNING.
Q OKAY. AGAIN -- AND AGAIN, YOU SAY IN THE MORNING, VERY EARLY, AT DAYLIGHT. WHEN WAS THIS THAT YOU WERE DOING THIS---
A THIS WAS IN APRIL OF LAST YEAR---
Q OKAY.
A ---2001.
Q THREE MONTHS OR SO AFTER THE INCIDENT, TWO AND HALF

THREE MONTHS AFTER THE INCIDENT?

A CORRECT.

Q OKAY. AS A RESULT OF LOCATING THAT VEHICLE, WHAT DID YOU DO?

A I OBTAINED A SOUTH CAROLINA REGISTRATION FOR THAT PARTICULAR VEHICLE.

Q HOW DID YOU DO THAT?

A RAN IT THROUGH THE HIGHWAY DEPARTMENT---

Q OKAY.

A ---THE---

Q RAN THE TAG THROUGH THE HIGHWAY DEPARTMENT TO GET THE REGISTRATION?

A THAT'S CORRECT.

Q OKAY. WHAT DID YOU DO FROM THERE?

A AT THAT POINT I DIDN'T DO ANYTHING. I DISCUSSED IT WITH MR. TAYLOR. LATER ON I CONTACTED THE REGISTERED OWNER WHO LIVED DOWN IN MONCKS CORNER AND DETERMINED THAT THE REGISTERED OWNER'S SON, I BELIEVE IT WAS, WAS AT THAT TIME A STUDENT AT ALLEN UNIVERSITY AND HAD POSSESSION OF THE VEHICLE AT THAT TIME, BEING JANUARY OF 2001 AND HAD ATTENDED ALLEN UNIVERSITY.

AND SUBSEQUENT TO THAT I HAD A CONVERSATION WITH MR. COPELAND.

Q WHO IS MR. COPELAND?

A GARRETT COPELAND WHO WAS IN FACT THE STUDENT AT THAT

TIME AT ALLEN UNIVERSITY.

Q OKAY. AS A RESULT OF THAT CONVERSATION WITH MR. COPELAND, DID YOU TAKE ANY OTHER ACTION?

A I DID. I DID.

Q AND WHAT DID YOU DO?

A AS A RESULT OF THAT CONVERSATION, I FORWARDED TO ANOTHER INVESTIGATOR IN CHARLESTON TWO PHOTOGRAPHS, ONE OF MR. LUCIUS STATEN AND ONE OF MR. DUSHUN STATEN TAKEN IN JANUARY OF 2001. FORWARDED THOSE PHOTOGRAPHS TO HIM FOR IDENTIFICATION TO SEE IF HE COULD RECOGNIZE THOSE TWO INDIVIDUALS.

Q OKAY. AND DID YOU EVER INTERVIEW MR. COPELAND YOURSELF PERSONALLY?

A YES, I DID.

MR. STRICKLER: OKAY. THANK YOU, VERY MUCH.

Q WELL, LET ME JUST ASK YOU THIS, LET ME SHOW YOU THESE TWO DOCUMENTS HERE, THE PHOTOGRAPHS IN THERE, AND ASK YOU WHETHER THOSE ARE THE PHOTOGRAPHS YOU FORWARDED TO THE OTHER INVESTIGATOR?

A YES, SIR, THEY ARE.

Q THANK YOU VERY MUCH.

A ALONG WITH THE ATTACHED PIECE OF PAPER.

(PAUSE.)

MR. STRICKLER: YOUR HONOR, I'D ASK GO AHEAD AND MARK THESE FOR IDENTIFICATION PURPOSES AT THIS POINT IN

TIME.

MR. GASSER: YOUR HONOR, I DON'T WANT TO MAKE TOO MUCH OF A BIG DEAL ABOUT IT BUT UNDER THE RULES, THE DEFENSE COUNSEL, EITHER ONE OF THEM, HAVE ANY DOCUMENTS THEY PLAN ON INTRODUCING, I'D LIKE TO SEE THEM BEFORE THEY -- UNDER THE RULES, SINCE THEY'VE GOT EVERYTHING WE HAD WEEKS IN ADVANCE.

MR. STRICKLER: WELL, LET US APPROACH, PLEASE.

THE COURT: NO, WE DON'T NEED TO APPROACH. JUST MARK THE THINGS, CALL YOUR NEXT WITNESS, WE'LL PUT THEM IN.

MR. GASSER: AND IF THEY HAVE ANY OTHER DOCUMENTS THEY PLAN ON INTRODUCING, I'D JUST, YOU KNOW---

THE COURT: WHAT HE'S SAYING IS BEFORE THE DOCUMENT IS DISCLOSED TO THE JURY, EITHER THROUGH TELLING SOMEBODY WHAT IT IS OR SHOWING IT TO THE JURY, SOMEBODY'S GOT TO IDENTIFY IT AND HE'S GOTTA SEE IT.

MR. STRICKLER: SURE. WE UNDERSTAND THAT.

MR. GASSER: AND ANY -- UNDER THE -- I FILED A RECIPROCAL DISCOVERY. ANYTHING THEY PLAN ON INTRODUCING INTO EVIDENCE THEY SHOULD HAVE GIVEN ME WEEKS AGO.

MR. TAYLOR: NO, NO.

MR. GASSER: THEY---

MR. TAYLOR: NO, NOT UNDER THE RULES.

THE COURT: HAVE A SEAT, MR. TAYLOR.

MR. TAYLOR: THANK YOU, SIR.

COURT REPORTER: DEFENDANT'S FIVE AND SIX FOR IDENTIFICATION.

(**DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER FIVE, PHOTOGRAPH**; AND,

DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER SIX, PHOTOGRAPH, ARE NOW MARKED FOR IDENTIFICATION.)

MR. STRICKLER: MR. MacDOUGALL, PLEASE ANSWER ANY QUESTIONS EITHER OF THE OTHER ATTORNEYS MAY HAVE FOR YOU, SIR.

MR. GASSER: I HAVE NO QUESTIONS.

THE COURT: HAVE ANY QUESTIONS, MR. TAYLOR?

MR. TAYLOR: NO.

THE COURT: ALL RIGHT. YOU CAN COME DOWN.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

MR. STRICKLER: THANK YOU, YOUR HONOR. IF IT PLEASE THE COURT. DEFENSE WOULD CALL GARRETT COPELAND.

(**GARRETT G. COPELAND**, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT, SIR AND STATE YOUR FULL NAME FOR THE RECORD.

MR. COPELAND: GARRETT GERARD COPELAND. COPELAND, C-O-P-E-L-A-N-D.

DIRECT EXAMINATION BY MR. STRICKLER:

Q GOOD AFTERNOON, MR. COPELAND.

A GOOD AFTERNOON.

Q MY NAME IS DOUG STRICKLER AND I'M REPRESENTING LUCIUS STATEN. PRIOR TO AN HOUR AGO WHEN I MET YOU IN THE AUDIENCE, HAD YOU EVER MET WITH ME BEFORE?

A NEVER.

Q HAVE YOU EVER HAD ANY CONVERSATION WITH ME BEFORE?

A NONE.

Q OKAY. HAVE YOU HAD CONTACT OR HAVE SPOKEN WITH MR. MacDOUGALL WHO JUST TESTIFIED?

A I HAVE.

Q DID YOU HAVE OCCASION AT SOME POINT LAST YEAR -- OR EXCUSE ME, I GUESS THIS YEAR, TO VIEW A COUPLE OF PHOTOGRAPHS AS A RESULT OF THE CONVERSATION---

A I DID.

Q LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S FOR LUCIUS STATEN NUMBER SIX FOR IDENTIFICATION AND ASK IF YOU RECOGNIZE ONE OF THE PHOTOGRAPHS AND TWO OF THE ATTACHED DOCUMENTS?

A I DO.

Q YOU DO?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q OKAY. AND, AGAIN, THIS IS DEFENDANT'S FIVE FOR I.D. FOR LUCIUS STATEN. I PRESENT THAT TO YOU AND ASK IF YOU RECOGNIZE ONE OF THE PHOTOGRAPHS AND TWO OF THE ATTACHED DOCUMENTS?

A I DO.
Q OKAY. CAN YOU PLEASE DESCRIBE FOR US WHAT THOSE TWO DOCUMENTS -- PHOTOGRAPHS AND DOCUMENTS ARE?
A THESE ARE PHOTOGRAPHS AND DOCUMENTS -- DOCUMENTS STATING THAT I DO IDENTIFY THE TWO YOUNG MEN THAT I GAVE A RIDE TO.
Q OKAY. LET ME ASK YOU THIS, WHEN DID YOU FIRST VIEW THE PHOTOGRAPHS?
A I CAN'T REMEMBER WHAT DATE IT WAS BUT IT WAS -- AN INVESTIGATOR BROUGHT IT OVER TO WHERE I WAS WORKING, SHOWED IT TO ME. BRIEFLY SHOWED IT TO ME AND I RECOGNIZED THEM. I REMEMBER GIVING THEM A RIDE.
Q OKAY. IF YOU'LL LOOK AT THE DOCUMENT ATTACHED TO DEFENDANT'S NUMBER FIVE FOR I.D., DOES THAT REFLECT A DATE WHEN YOU LOOKED AT?
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q AND WHAT DATE WAS THAT?
A FEBRUARY THE -- FEBRUARY THE 11TH.
Q OF WHAT---
A 2002.
Q 2002?
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q AND THEN ON DEFENDANT'S SIX FOR I.D., DOES THAT ALSO REFLECT A DATE?
A SAME DATE.

Q OKAY. AND THE DOCUMENTS THAT ARE ATTACHED TO THESE PHOTOGRAPHS, WHAT DO THEY SIGNIFY? WHAT'S STATED ON THOSE DOCUMENTS?

A IT SAYS, "I, GARRETT COPELAND, DO RECOGNIZE THE MAN IN THE PHOTOGRAPHS NUMBER TWO" -- SAME THING ON ONE -- "NUMBER TWO AS ONE OF THE MEN I GAVE A RIDE TO IN COLUMBIA, SOUTH CAROLINA ON THE NIGHT OF JANUARY 15TH, 2001. I HAVE INITIALED AND DATED THE PHOTOGRAPHS."

Q OKAY. COULD YOU PUT THE PHOTOGRAPHS DOWN FOR A MOMENT NOW?

WHAT I'D LIKE TO ASK YOU, IF I COULD, MR. COPELAND, ON JANUARY 15TH, 2001, WHERE DID YOU LIVE?

A I LIVED COP -- I LIVED IN HIGGINS HALL. I LIVED IN COPPIN OUR LAST SEMESTER. I LIVED IN HIGGINS HALL.

Q HIGGINS HALL IS ASSOCIATED WITH WHAT INSTITUTION?

A ALLEN UNIVERSITY.

Q YOU WERE A STUDENT AT ALLEN AT THAT POINT IN TIME?

A CORRECT.

Q WHAT YEAR WERE YOU AT ALLEN THEN?

A THEN I WAS FIRST SEMESTER SENIOR.

Q FIRST SEMESTER SENIOR?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q HAVE YOU SINCE COMPLETED YOUR STUDIES AT ALLEN?

A I JUST COMPLETED DECEMBER.

Q IN DECEMBER?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q AND WHAT KIND OF -- TYPE OF DEGREE DID YOU RECEIVE FROM ALLEN?
A I WILL HAVE RECEIVED MY EDUCATION DEGREE.
Q OKAY.
A ELEMENTARY EDUCATION IN MAY. WE DON'T HAVE A DECEMBER GRADUATION.
Q OKAY. SO YOU GRADUATED BUT YOU DON'T GRADUATE UNTIL---
A MAY.
Q ---MAY. OKAY.
A CORRECT.
Q ARE YOU EMPLOYED AT ALL, SIR?
A NOT EMPLOYED RIGHT NOW. I'M -- I'M -- WELL, IF -- YOU CAN SAY EMPLOYMENT, I'M AN ORDAINED MINISTER IN THE AFRICAN METHODIST EPISCOPAL CHURCH.
Q YOU'RE AN ORDAINED MINISTER IN THE AFRICAN METHODIST EPISCOPAL CHURCH?
A CORRECT.
Q OKAY. HOW LONG HAVE YOU BEEN ORDAINED IN THE CHURCH, SIR?
A TWO YEARS.
Q TWO YEAR? OKAY. NOW, JANUARY 15TH, 2001, DID YOU BECOME AWARE OF -- OF -- LET ME ASK YOU THIS, ON THAT DAY, DID YOU HAVE OCCASION TO COME IN CONTACT WITH LUCIUS

STATEN AND DUSHUN STATEN?

A I DID.

Q OKAY. NOW, HOW -- FIRST OF ALL, WE'LL TALK ABOUT YOUR CONTACT -- I WANT TO TALK WITH YOU ABOUT HOW -- WHAT HAPPENED IN THE CONTACT. BUT FIRST, HOW DO YOU REMEMBER THAT THE CONTACTS YOU HAD WITH THEM WAS ON JANUARY THE 15TH, 2001 AS OPPOSED TO JANUARY 16TH, 2001, SOME OTHER DAY?

A OKAY.

Q HOW DID THEY OCCUR? WELL, HOW DO YOU KNOW IT WAS ON THE 15TH OF JANUARY, RATHER THAN SOME OTHER DAY?

A I REMEMBER THE DATE BECAUSE THAT PARTICULAR DAY, WHEN THAT INCIDENT HAPPENED, IT WAS ALL OVER THE NEWS LATER ON. AND IT WAS THAT DAY AND I HEARD IT OCCURRING OVER AND OVER AGAIN HERE IN COURT TODAY.

Q OKAY. SO YOU HEARD ABOUT -- AFTERWARDS YOU HEARD ABOUT THE INCIDENT THAT HAPPENED ON THE 15TH AT BENEDICT?

A RIGHT.

Q OKAY. SO YOU CAN GO AHEAD AND REMEMBER WHAT HAPPENED WITH YOU THAT NIGHT TOO; RIGHT?

A RIGHT.

Q OKAY. WHAT HAPPENED WITH YOU THAT NIGHT? DID YOU HAVE ANY CONTACT WITH THESE GUYS?

A I HAD CONTACT WITH THOSE GUYS.

Q HOW DID THAT COME ABOUT?

A JUST BEFORE I -- JUST BEFORE I HAD CONTACT WITH THESE YOUNG MEN, ME AND ONE OF MY FRIENDS FROM THE CHURCH THAT I ATTEND HAD JUST LEFT A FELLOWSHIP THAT WE DO EVERY MONDAY. WE'LL GO PRAY -- HAVE PRAYER AND CONVERSATION.

AND HE HAD TOLD ME THAT HE HAD A CHECK FOR ME FROM THE SUNDAY SCHOOL.

Q RIGHT.

A AND HE TOLD ME NOT TO -- TOLD ME NOT TO LET HIM FORGET ABOUT IT. WHEN HE LEFT THE CHURCH, HE -- I HAD FORGOTTEN ABOUT IT BUT HE WAS IN FRONT OF ME. HIS NIECE GOES TO ALLEN ALSO. HIS WIFE WAS OVER THERE VISITING. SO HE PULLED OVER IN FRONT OF COPPIN HALL WHICH IS THE DORMITORY WHERE I SAW THE TWO MEN.

Q OKAY. WHAT---

A WHICH IS ON HARDEN STREET.

Q IT'S ON HARDEN STREET?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q OKAY.

A HE PULLED -- WHEN HE PULLED OVER OVER THERE, I WASN'T GONNA STOP BUT WHEN I SAW HIM STOP, I PULLED OVER BEHIND HIM. WHEN I PULLED OVER BEHIND HIM, AT THAT TIME -- I BELIEVE THAT IT WAS A LIGHT OR SOMETHING SEPARATED US. AND AT THAT TIME WHEN I PULLED UP, THOSE TWO YOUNG MEN WERE ASKING -- THEY WERE ALREADY TALKING TO HIM. WHEN I GOT OUT THE TRUCK AND WAS GOING OVER THERE TO CATCH UP

WITH THEM, THEY -- I CAN'T REMEMBER EXACTLY WHO CAME OVER FIRST.

BUT THEY BEGAN ASKING ME, "CAN YOU GIVE ME A RIDE?"

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A AND I WAS, AH, YOU KNOW, DIDN'T -- WASN'T TOO SURE. I WENT OVER TO BARRY'S CAR AND -- TO REMIND HIM ABOUT THE CHECK.

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A AND AT THAT TIME THEY CAME OVER AND WERE TALKING TO BOTH OF US. AND BARRY WAS LIKE, "WELL, I WASN'T GONNA DO IT BECAUSE I WAS BY MYSELF." AND I SAID, WELL -- AND THEN HE ASKED ME, HE SAID, "MAN, LOOK, I'LL GIVE YOU -- I'LL PAY YOU $20.00 IF YOU TAKE ME OVER -- BECAUSE I REALLY NEED TO GET OVER ON ST. ANDREWS ROAD, OVER THAT SIDE OF TOWN."

I LOOKED AT BARRY AND SAID, WELL -- I SAID, "WELL, IF YOU GO JOHNSON, I'LL GO AND I'LL TAKE THEM."

AND HE SAID, "WELL, YOU WANT ME TO DRIVE?" I SAID, "NO, I'LL DRIVE." YOU KNOW, HE LOCKED UP HIS CAR. WE GOT IN THE CAR AND I TOOK THEM OVER.

Q OKAY. DO YOU HAVE ANY IDEA OF WHAT TIME OF THE DAY OR NIGHT THIS WAS, ROUGHLY?

A IT HAD TO HAVE BEEN IN THE AREA OF -- I'LL SAY -- WE MEET OVER THERE BETWEEN 5 AND 6.

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A WE STAY ANYWHERE FROM A COUPLE OF HOURS. I CAN'T -- I CAN'T SAY DEFINITELY WHAT TIME IT WAS.

Q OKAY.

A BUT IT HAD TO HAVE BEEN IN THE -- AFTER 7 MAYBE, IN THAT AREA.

Q COULD HAVE BEEN LATER? AFTER---

A COULD HAVE BEEN. COULD HAVE BEEN LATER.

Q OKAY. DARK OUT?

A YEAH.

Q OKAY.

A WELL, ONE OF THE WAY THAT I -- I -- I COULD SAY WHAT THE TIME IT WAS---

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A ---IS WHEN I GOT BACK TO THE DORM---

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A MY ROOMMATE -- BECAUSE I CAME STRAIGHT FROM -- WHENEVER I DROPPED THEM OFF AND WENT TO THE DORM, MY ROOMMATE HAD JUST TOLD ME ABOUT THE INCIDENT.

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A SO IT WAS NEAR IN THAT TIME.

Q SOMETIME AROUND THAT TIME?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q OKAY. IS THERE ANY QUESTION IN YOUR MIND THAT THESE ARE THE TWO GENTLEMEN YOU PICKED UP THAT NIGHT?

A ANY QUESTION IN---

Q IS THERE ANY QUESTION IN YOUR MIND THAT THIS GENTLEMAN AND THAT GENTLEMAN ARE THE TWO PEOPLE THAT YOU PICKED UP THAT NIGHT?

A ON THE PARTICULAR NIGHT?

Q RIGHT. THE NIGHT OF THE 15TH?

A NO. I DIDN'T COUNT IT STRANGE BECAUSE ON CAMPUS GUYS ARE ALWAYS ASKING FOR RIDES.

Q UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

A SO I DIDN'T COUNT IT STRANGE BUT I WASN'T GONNA DO IT BY MYSELF.

Q RIGHT. AND YOU TOOK THEM WHERE?

A ON ST. ANDREWS ROAD, THAT EXXON, I THINK, ACROSS FROM THE IHOP.

MR. STRICKLER: YOUR HONOR, I'D MOVE TO GO AHEAD AND INTRODUCE THESE.

MR. GASSER: NO OBJECTION.

COURT REPORTER: DEFENDANT LUCIUS STATEN'S NUMBER FIVE IN EVIDENCE AND NUMBER SIX IN EVIDENCE.

(**DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER FIVE, PHOTOGRAPH;** AND,

DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER SIX, PHOTOGRAPH, PREVIOUSLY MARKED FOR IDENTIFICATION, ARE NOW ENTERED INTO EVIDENCE, WITHOUT OBJECTION.)

MR. STRICKLER: THANK YOU VERY MUCH.

MR. COPELAND, THANK YOU VERY MUCH. ANSWER ANY

QUESTIONS THE OTHER ATTORNEYS MAY HAVE FOR YOU.

THE COURT: MR. TAYLOR, YOU GOT ANY QUESTIONS?

MR. TAYLOR: I HAVE NONE, THANK YOU.

THE COURT: MR. GASSER, GOT ANY QUESTIONS?

MR. GASSER: MAYBE ONE OR TWO.

CROSS-EXAMINATION BY MR. GASSER:

Q MR. COPELAND, HOW YOU DOING? MY NAME IS JOHNNY GASSER. I WORK IN THE SOLICITOR'S OFFICE HERE.

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q THE LOCATION WHERE YOU PICKED UP THESE TWO GENTLEMEN WAS ON HARDEN STREET; IS THAT CORRECT?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.) CORRECT.

Q WERE THEY ALREADY THERE WHEN YOU PICKED THEM UP? YOU SEE WHAT I'M SAYING?

A NO.

Q IN OTHER WORDS---

A IF THEY WERE ALREADY THERE IN FRONT OF THE DORM?

Q YES.

A YEAH, THEY WERE IN FRONT OF THE DORM WHEN I GOT THERE.

Q OKAY. SO YOU HAVE NO IDEA HOW THEY WOULD HAVE GOTTEN TO THE DORM?

A NO.

MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN COME DOWN. YOU'RE FREE TO GO. THANK YOU.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. STRICKLER: THANK YOU, YOUR HONOR. DEFENSE CALLS JIM McNAUGHTON.

(**JAMES R. McNAUGHTON**, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT HERE, SIR, AND STATE YOUR FULL NAME FOR THE RECORD. PLEASE SPELL YOUR LAST.

MR. McNAUGHTON: MY NAMES IS JAMES ROBERT McNAUGHTON, M-C-N-A-U-G-H-T-O-N.

DIRECT EXAMINATION BY MR. STRICKLER:

Q GOOD AFTERNOON, MR. McNAUGHTON. AGAIN, MY NAME'S DOUG STRICKLER AND YOU DON'T KNOW ME AT ALL, DO YOU?

A NO, I DON'T.

Q NEVER SPOKEN TO ME. ALL RIGHT, SIR. BY WHOM ARE YOU EMPLOYED, MR. McNAUGHTON?

A TEMPERATURE CONTROL HEATING AND AIR CONDITIONING COMPANY.

Q AND WHERE IS THAT LOCATED?

A 1020 FARMING CREEK ROAD, IRMO.

Q OKAY. AT SOME POINT IN TIME IN JANUARY OF LAST YEAR, DID YOU HAVE OCCASION TO SEE -- AND THIS IS STATE'S

EXHIBIT FORTY, A GREEN CAR AROUND THE BUSINESS---

A YES.

Q OKAY. DO YOU REMEMBER WHEN YOU FIRST BECAME AWARE OF THAT CAR BEING THERE?

A WE HAD A PRAYER MEETING AT THE BUSINESS. THERE WERE A NUMBER OF PEOPLE THERE. IT WASN'T THERE AT 7:00, IT WAS THERE AT 9:00.

Q OKAY. AND DO YOU REGULARLY HOLD PRAYER MEETINGS AT YOUR BUSINESS?

A PERIODICALLY.

Q PERIODICALLY? WHAT DAY OF THE WEEK WAS THAT MEETING?

A TUESDAY EVENING.

Q IF MONDAY WAS THE 15TH, THEN THAT WOULD HAVE BEEN TUESDAY THE 16TH OF JANUARY?

A THAT'S CORRECT.

Q AND AS I UNDERSTAND YOUR TESTIMONY, THAT CAR WAS NOT THERE WHEN YOU STARTED THE MEETING AT WHAT TIME?

A 7.

Q 7 IN THE EVENING?

A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

Q AND IT WAS THERE WHEN YOU FINISHED YOUR MEETING ABOUT 9:00---

A YES, SIR.

Q ---IN THE EVENING ON JANUARY 16TH, 2001?

A YES, SIR.

MR. STRICKLER: THANK YOU VERY MUCH, SIR. ANSWER ANY QUESTIONS---

THE COURT: ANY QUESTIONS, MR. TAYLOR?

MR. TAYLOR: JUST A COUPLE OF QUESTIONS.

CROSS-EXAMINATION BY MR. TAYLOR:

Q MR. McNAUGHTON, ABOUT HOW FAR IS YOUR BUSINESS ESTABLISHMENT FROM THE CLOSEST ENTRANCE INTO FRIARSGATE SUBDIVISION?

A IT'S ABOUT -- IT'S LESS THAN SIX-TENTHS OF A MILE. IT'S RELATIVELY -- IT'S A RESIDENTIAL AREA.

Q AND FOR THOSE WHO ARE NOT FAMILIAR WITH FRIARSGATE, THAT IS A VERY LARGE---

A VERY LARGE. QUITE A FEW PEOPLE LIVE THERE.

Q ALL RIGHT. AND HOW FAR IS IT FROM BROAD RIVER ROAD?

A LESS -- IF YOU TURN ON BROAD RIVER ROAD, THERE'S A BIG BOAT STORE, A CHURCH ON THE CORNER, YOU CAN SEE THE RAILROAD TRACKS. OUR BUILDING IS RIGHT BESIDE THE RAILROAD TRACKS. SO IT IS LESS THAN A QUARTER OF A MILE, MAYBE A LITTLE MORE THAN AN EIGHTH.

Q SO IT WOULD NOT BE A FAIR CHARACTERIZATION IT'S IN SOME REMOTE AREA OF THE COUNTY?

A NO. MATTER OF FACT, THERE'S A LOT OF TRAFFIC UP AND DOWN THE RAILROAD TRACKS WITH PEOPLE WALKING, MOTORCYCLES AND THINGS OF THIS NATURE.

MR. TAYLOR: ALL RIGHT, SIR. THANK YOU. THAT'S ALL I HAVE.

THE COURT: ANY QUESTIONS, MR. GASSER?

MR. GASSER: NO, SIR.

THE COURT: ALL RIGHT, SIR. YOU CAN COME DOWN.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. STRICKLER: THANK YOU VERY MUCH, SIR. DEFENSE WOULD CALL JANICE GABLE.

(**JANICE GABLE**, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT THERE AND STATE YOUR FULL NAME FOR THE RECORD.

MS. GABLE: JANICE LAND GABLE.

DIRECT EXAMINATION BY MR. STRICKLER:

Q GOOD AFTERNOON, MS. GABLE. YOU BEEN SITTING UP HERE ALL AFTERNOON?

A SINCE 2.

Q THAT'S MY FAULT. I'M SORRY.

A THAT'S OKAY.

Q BY WHOM ARE YOU EMPLOYED?

A ALLIANCE RESIDENTIAL MANAGEMENT, CROSSROADS APARTMENTS.

Q OKAY. AND DID YOU, PURSUANT TO SUBPOENA SERVED ON YOU TODAY, DID YOU BRING SOME DOCUMENTS RELATING TO---

A YES, I DID.
Q IF YOU COULD SHOW THOSE TO ME.
(PAUSE.)
Q ARE THOSE ORIGINALS YOU HAVE?
A YES, THOSE ARE.
Q OKAY. LET ME SHOW YOU -- LET ME SHOW YOU THESE AND ASK YOU IF THEY FAIRLY AND ACCURATELY REFLECT THE ORIGINALS THAT YOU BROUGHT WITH YOU?
A YES, THEY DO.
Q OKAY. AND WHAT ARE THOSE DOCUMENTS, MA'AM?
A IT IS A STATEMENT OF THE -- MR. STATEN'S RESIDENTIAL HISTORY WHERE HIS PAYMENT HISTORY FROM WHERE HE LIVED AT CROSSROADS.
Q OKAY. IT RELATES TO WHAT EXACT UNIT AT CROSSROADS APARTMENTS?
A APARTMENT 1308.
Q OKAY. AND ARE THOSE RECORDS KEPT IN THE NORMAL COURSE OF BUSINESS?
A YES.
Q OKAY. AND DO YOU, AS PART OF YOUR JOB MANAGING, YOU ACT AS CUSTODIAN OF THOSE RECORDS, KEEP THEM UP TO DATE?
A YES.
Q OKAY.
MR. STRICKLER: YOUR HONOR, I'M GOING TO GO AHEAD AND MOVE THE INTRODUCTION OF THESE RECORDS ALSO.

THE COURT: HAVE YOU SHOWN THOSE TO HIM?

MR. STRICKLER: I'VE SHOWN---

MR. GASSER: NO OBJECTION.

THE COURT: NO OBJECTION.

COURT REPORTER: DEFENDANT LUCIUS STATEN'S NUMBER SEVEN IN EVIDENCE.

(DEFENDANT LUCIUS STATEN'S EXHIBIT NUMBER SEVEN, PAYMENT RECORDS OF CROSSROADS APARTMENT, IS NOW ENTERED INTO EVIDENCE WITHOUT OBJECTION.)

MR. STRICKLER: THANK YOU, MA'AM.

Q MS. GABLE, I PRESENT YOU WHAT'S BEEN MARKED NOW AS DEFENDANT LUCIUS STATEN'S NUMBER SEVEN IN EVIDENCE AND ASK YOU, WHAT WAS THE STATUS OF MR. STATEN'S RENTAL AT CROSSROADS APARTMENTS COME JANUARY OF 2001?

A HE WAS CURRENTLY TWO MONTHS BEHIND.

Q TWO MONTHS BEHIND? OKAY. SO HE HAD NOT KEPT HIS RENT CURRENT AT THAT POINT IN TIME?

A CORRECT.

MR. STRICKLER: OKAY. THANK YOU VERY MUCH, MA'AM. THAT'S ALL I HAVE. PLEASE ANSWER ANY QUESTIONS ANY OF THESE GENTLEMEN MAY HAVE.

THE COURT: ALL RIGHT. MR. TAYLOR, YOU DON'T HAVE ANY QUESTIONS, DO YOU?

MR. TAYLOR: NO, SIR.

THE COURT: MR. GASSER, YOU GOT ANY QUESTIONS?

MR. GASSER: NO.

THE COURT: ALL RIGHT YOU CAN COME DOWN. THANK YOU VERY MUCH.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. STRICKLER: IF IT PLEASE THE COURT. IS THERE SOME POOR SOUL FROM AMERISUITES IN THE COURTROOM?

(NO RESPONSE.)

MR. STRICKLER: GOT THE RECORDS BUT I DON'T HAVE THE WITNESS.

YOUR HONOR, DEFENDANT LUCIUS STATEN WOULD REST.

THE COURT: ALL RIGHT. HOW MUCH YOU GOT?

MR. TAYLOR: I HAVE TWO, THREE, FOUR WITNESSES. TWO OF THEM WILL BE RATHER SHORT, I BELIEVE.

THE COURT: ALL RIGHT. LET'S GET THOSE FIRST.

MR. TAYLOR: ALL RIGHT.

THE COURT: YOU CAN CALL THEM IN ANY ORDER YOU WANT. I DON'T WANT TO UPSET YOUR ORDER.

MR. TAYLOR: I -- I -- I APPRECIATE THE FACT THAT WE NEED TO MOVE ON. SO WE'LL CALL CHARISE GLIVENS AT THIS TIME.

THE COURT: OKAY.

(PAUSE.)

THE COURT: IS THIS THE ONE WITH THE THIRD PARTY DEAL?

MR. TAYLOR: NO, SIR.

(**CHARISE M. GLIVENS**, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT THERE, MA'AM. STATE YOUR FULL NAME FOR THE RECORD. PLEASE SPELL YOUR LAST.

MS. GLIVENS: IT'S CHARISE MELISSA GLIVENS, G-L-I-V-E-N-S.

DIRECT EXAMINATION BY MR. TAYLOR:

Q MS. GLIVENS, WHERE DO YOU LIVE?

A 1601 LONGCREEK DRIVE.

Q AND HOW LONG HAVE YOU LIVED THERE?

A TWO YEARS.

Q ALL RIGHT. SO YOU LIVED THERE OBVIOUSLY ON JANUARY THE 15TH OF 2001; IS THAT CORRECT?

A YES.

Q DO YOU KNOW DUSHUN STATEN AND LUCIUS STATEN?

A YES.

Q DO YOU KNOW THEM EQUALLY AS WELL OR YOU KNOW ONE BETTER THAN THE OTHER?

A I KNOW DUSHUN BETTER THAN LUCIUS.

Q ALL RIGHT. AND HOW LONG HAVE YOU KNOWN LUCIUS AND DUSHUN?

A I'VE KNOWN DUSHUN FOR -- SINCE 1988.

Q OKAY. AND HE LIVED IN SOUTH CAROLINA FOR A LONG TIME; IS THAT CORRECT?

A THAT'S CORRECT.
Q OKAY. NOW, I WANT YOU TO TURN YOUR ATTENTION TO JANUARY THE 15TH, 2001. YOU REMEMBER THAT DAY?
A YES, I DO.
Q YOU REMEMBER THAT WAS THE DAY THAT A PERSON WAS KILLED AT BENEDICT COLLEGE, ON THE CAMPUS?
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q YOU RECALL THAT?
A YES.
Q DO YOU RECALL WHETHER OR NOT YOU SAW EITHER OF THE STATEN BROTHERS ON THAT DAY?
A I DID. I SAW DUSHUN EARLIER THAT DAY.
Q ALL RIGHT. AND WHEN DID YOU SEE HIM?
A I'M NOT SURE OF THE TIME BUT IT WAS EARLIER.
Q EARLIER---
A IT WAS BEFORE LIKE 6, I BELIEVE.
Q OKAY. BEFORE 6:00?
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q ALL RIGHT. AND THEN AFTER THAT, DID YOU HAVE OCCASION TO SEE HIM AGAIN?
A I SAW HIM THAT NIGHT.
Q THAT NIGHT?
A YES.
Q ALL RIGHT. AND DO YOU HAVE SOME IDEA OF APPROXIMATELY WHAT TIME YOU SAW HIM THAT NIGHT?

A IT WAS AFTER 9.
Q ALL RIGHT. AND WAS HE ALONE?
A HE WAS WITH HIS BROTHER.
Q HIS BROTHER---
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)
Q ---LUCIUS?
A YES.
Q THEY BOTH WERE---
A TOGETHER.
Q ALL RIGHT. AND HOW DID -- HOW DID THEY ARRIVE AT YOUR HOUSE?
A DUSHUN CALLED ME AND ASKED ME TO PICK HIM UP FROM THE EXXON STATION ACROSS FROM THE IHOP ON ST. ANDREWS ROAD.
Q ALL RIGHT. AND IS THAT WHERE YOU WENT AND PICKED THEM UP?
A YES.
Q OKAY. HOW LONG DID THEY STAY AT YOUR HOME?
A THEY ONLY STAYED APPROXIMATELY TEN MINUTES. THEY MADE A FEW PHONE CALLS AND THEN SOMEONE CAME TO PICK THEM UP.
Q OKAY. AND DO YOU KNOW WHO PICKED EITHER OR EACH OF THEM UP?
A I DON'T.
Q YOU DO NOT. OKAY. THANK YOU, MA'AM.

THEY DIDN'T HAVE ANY DISCUSSION WITH YOU OR DID THEY ABOUT ANYTHING THEY HAD SEEN OR HEARD THAT NIGHT?

A NO, THEY DIDN'T.

MR. TAYLOR: THANK YOU, MA'AM.

THE COURT: ANY QUESTIONS, MR. STRICKLER?

MR. STRICKLER: NO, SIR.

THE COURT: ANY QUESTIONS, MR. GASSER?

MR. GASSER: YES, SIR.

CROSS-EXAMINATION BY MR. GASSER:

Q LET ME GET THIS STRAIGHT. MS. GLIVENS, MY NAME IS JOHNNY GASSER. I'M -- I WORK IN THE SOLICITOR'S OFFICER HERE. YOU AND I HAVE NEVER MET, HAVE WE, MA'AM?

A NO.

Q OKAY. YOU INDICATED THAT YOU REMEMBER THIS EVENING BECAUSE IT WAS THE NIGHT THAT A STUDENT AT BENEDICT COLLEGE GOT SHOT IN THE BACK OF THE HEAD AND YOU REMEMBER THAT EVENT, IS THAT -- IS THAT WHAT YOUR RESPONSE WAS? THAT'S HOW YOU REMEMBER THIS NIGHT?

A I REMEMBER THAT NIGHT BECAUSE I KNOW THE NEXT DAY I HAD A TEST IN MY CLASS AND I REMEMBER THAT I SEEN IT ON THE NEWS AND I REMEMBERED THAT NIGHT I PICKED THEM UP.

Q SO IT'S YOUR TESTIMONY THAT -- HAVE YOU BEEN SITTING IN HERE THROUGHOUT THE COURSE OF THE TRIAL?

A YES.

Q OKAY. SO YOU PICK UP LUCIUS AND DUSHUN STATEN AT AN

EXXON STATION SOMETIME WITHIN AN HOUR AFTER SOME KID GETS SHOT IN THE BACK OF THE HEAD? YOU SAID IT WAS SOMETIME AROUND 9:00; IS THAT CORRECT?

A YES.

Q AND LUCIUS AND DUSHUN STATEN NEVER SAID A WORD TO YOU WHERE THEY HAD BEEN?

A NO.

Q WHAT THEY HAD SEEN?

A NO.

Q WHAT HAD HAPPENED?

A THEY GO BACK TO YOUR APARTMENT AND DIDN'T SAY A WORD TO YOU ABOUT WHAT THEY HAD SEEN OR HEARD?

A NO.

Q JUST AS IF IT WAS JUST ANOTHER MONDAY EVENING, PICKING THEM UP AT THE EXXON STATION, GOING BACK TO YOUR APARTMENT?

A RIGHT.

Q NO BIG DEAL?

A NO BIG DEAL.

MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ANY REDIRECT?

REDIRECT EXAMINATION BY MR. TAYLOR:

Q ABOUT WHAT TIME WAS IT WHEN YOU GOT BACK TO YOUR APARTMENT WITH---

THE COURT: HE DIDN'T GO INTO THAT -- HE DIDN'T GO

INTO THAT ON DIRECT (SIC). YOU CAN'T GO INTO -- I MEAN CROSS, YOU CAN'T GO INTO IT ON REDIRECT.

MR. TAYLOR: YOU'RE CORRECT.

THE COURT: COME ON DOWN. CALL YOUR NEXT WITNESS.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

MR. TAYLOR: YOUR HONOR, WE CALL INVESTIGATOR MEAD.

THE COURT: YOU'RE STILL UNDER OATH, INVESTIGATOR MEAD.

(**PAUL JAMES MEAD**, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION BY MR. TAYLOR:

Q INVESTIGATOR MEAD, DID I SUBPOENA YOU TO BRING TWO PHOTOGRAPHS TO THIS TRIAL?

A YOU DID, SIR.

Q AND ARE THOSE PHOTOGRAPHS PHOTOGRAPHS THAT YOU CONFISCATED FROM THE APARTMENT ON ZIMALCREST ON THE 23RD OF JANUARY, 2001?

A THEY ARE.

Q ALL RIGHT. DID YOU BRING THOSE WITH YOU?

A I DID.

Q DO YOU HAVE THEM WITH YOU, SIR?

A (NO RESPONSE.)

Q ALL RIGHT. DO YOU RECOGNIZE THE MAN IN THIS PHOTOGRAPH?

A I DO.

Q AND WHAT IS HE WEARING?
A A BLACK CAP AND SOME KIND OF CLOTH ON HIS HEAD, A BROWN AVERIX SWEATER AND SOME BLUE JEANS.
Q ALL RIGHT. AND DO YOU RECOGNIZE THAT TO BE DUSHUN STATEN?
A I DO.
Q OKAY. AND IS THIS ALSO A PHOTOGRAPH OF DUSHUN STATEN?
A IT IS.
Q AND DO YOU SEE A BLUE BANDANA ON HIS WRIST?
A I DO.
Q IT'S NOT RED, IT'S BLUE; RIGHT?
A THAT'S CORRECT.

MR. TAYLOR: WE OFFER THESE.

MR. GASSER: NO OBJECTION.

MR. TAYLOR: THANK YOU, INVESTIGATOR MEAD. THAT'S ALL.

THE COURT: LET'S LET HER GET THOSE MARKED. THAT WILL BE ONE AND TWO; RIGHT?

COURT REPORTER: WELL, I WAS JUST PUTTING ALL THE STATEN'S TOGETHER AND JUST PUTTING "D" AND "L" ON THEM.

THE COURT: THAT'S FINE. THAT'S FINE.

COURT REPORTER: OKAY.

THE COURT: THAT WILL BE EIGHT AND NINE.

COURT REPORTER: NUMBER NINE AND NUMBER---

THE COURT: NUMBER TEN?

COURT REPORTER: NO. YOU'RE RIGHT, JUDGE. NUMBER EIGHT. EIGHT AND NINE FOR DUSHUN STATEN IN EVIDENCE.

(**DEFENDANT DUSHUN STATEN'S EXHIBIT NUMBER EIGHT, PHOTOGRAPH**; AND,

DEFENDANT DUSHUN STATEN'S EXHIBIT NUMBER NINE, PHOTOGRAPH, ARE NOW ENTERED INTO EVIDENCE, WITHOUT OBJECTION.)

THE COURT: THAT'S ALL?

MR. TAYLOR: THOSE WERE MY TWO SHORT WITNESSES THAT I TOLD YOU ABOUT.

MR. GASSER: WAIT A MINUTE. WAIT A MINUTE.

MR. TAYLOR: I'M SORRY.

MR. GASSER: I MEAN, THIS IS -- I MEAN, THIS IS HIS CASE IN CHIEF SO HE CALLED THIS WITNESS; CORRECT?

THE COURT: YEAH.

MR. GASSER: IT'S NOT LIKE REDIRECT OR RECROSS. I CAN GET INTO ANYTHING I WANT TO, CAN'T I?

THE COURT: YEAH.

MR. GASSER: OKAY.

THE COURT: TECHNICALLY.

MR. GASSER: JUST WANT TO MAKE SURE---

THE COURT: WHY DON'T WE JUST LET THE JURY VOTE ON IT, HOW MUCH THEY WANT---

MR. GASSER: OH, THIS IS GONNA BE BRIEF. AND I

GUESS I CAN LEAD TOO SINCE I'M ON CROSS.

CROSS-EXAMINATION BY MR. GASSER:

Q INVESTIGATOR MEAD, YOU HEARD -- YOU HEARD MS. GLIVENS JUST TESTIFY -- SHE TALKED ABOUT THE -- SHE LIVED AT THE PARK ROAD APARTMENTS?

A YES, SIR.

Q THE PARK APARTMENTS ON LONGCREEK DRIVE?

A YES, SIR.

Q OKAY. AND THE EXXON STATION -- ARE YOU FAMILIAR WITH THE EXXON STATION ACROSS FROM THE IHOP THAT THE DEFENDANTS HAD INDICATED -- OR THAT THE DEFENDANT LUCIUS STATEN INDICATED HE HAD GOTTEN A RIDE TO AND THAT MS. GLIVENS INDICATED SHE PICKS HIM UP FROM?

A I BELIEVE IT'S NEAR ST. ANDREWS ROAD AND 26.

Q ABOUT A THREE WOOD FROM CROSSROADS APARTMENTS?

A YEAH, IT'S A SHORT DISTANCE.

Q SO THE EXXON STATION THAT MS. GLIVENS INDICATED SHE PICKS THE TWO DEFENDANTS UP FROM IS JUST -- I MEAN IT'S ON THE FRONTAGE ROAD TO THEIR APARTMENT IN CROSSROADS APARTMENTS; CORRECT?

A THAT'S CORRECT.

Q AND IT'S -- THE PARK APARTMENTS ON LONGCREEK ARE A MUCH GREATER DISTANCE FROM THAT?

A YES, SIR.

MR. GASSER: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. STRICKLER: NOTHING FURTHER.

THE COURT: YOU CAN COME ON DOWN.

(THE WITNESS NOW LEAVES THE WITNESS STAND.)

THE COURT: Y'ALL COME UP HERE JUST A SECOND.

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE JURY AND THE COURT REPORTER, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

THE COURT: WE'RE GONNA DO ONE MORE WITNESS TODAY. WE WON'T BE TOO LONG AND THEN WE'LL BREAK AND THEN WE'LL HAVE THE FINAL WITNESS TOMORROW MORNING. THEN WE'LL HAVE ARGUE AND CHARGE AND GIVE YOU THE CASE.

MR. TAYLOR: MAY IT PLEASE THE COURT. WE CALL MICHELLE BUFF.

MR. GASSER: MAY WE APPROACH, YOUR HONOR?

THE COURT: I FEEL LIKE JUDGE ITO.

MR. TAYLOR: YOU'VE DONE A MUCH BETTER JOB THAN HE HAS.

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE JURY AND THE COURT REPORTER, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

THE COURT: ALL RIGHT. WE DECIDED WE'RE NOT GONNA TAKE THAT WITNESS. WE'RE GONNA TAKE IT IN THE MORNING. IT'S GONNA BE A SHORT WITNESS. SO WE'RE GONNA START AT 9:00 IN THE MORNING, GET THOSE TWO WITNESSES IN AND THEN

WE'LL HAVE CLOSING ARGUMENTS, CHARGE AND GIVE YOU THE CASE TO DECIDE.

NOW, REMEMBER 9:00, MR. MARTIN. IF EVERYBODY GETS HERE ON TIME, WE'LL START ON TIME AND WE'LL GET OUT OF HERE.

BUT ANYWAY, DON'T DISCUSS THE CASE WITH ANYBODY. WE DIDN'T HAVE ANY TV CAMERAS TODAY---

THE BAILIFF: QUIET PLEASE.

THE COURT: WE DIDN'T HAVE ANY NEWSPAPER REPORTERS OR ANYTHING SO THERE WON'T BE ANYTHING TO READ. DON'T READ. DON'T WATCH TV ON THIS THING. DON'T TALK TO YOUR HUSBAND AND WIFE AND BE BACK AT 9:00 IN THE MORNING AND WE'LL FINISH THIS THING UP.

HAVE A GOOD EVENING.

(JURY OUT AT 5:15 P.M.)

THE COURT: ALL RIGHT. LET'S TAKE ABOUT FIVE MINUTES AND THEN RESOLVE THAT ISSUE.

MR. TAYLOR: ALL RIGHT, SIR.

(COURT IS IN RECESS.)

COURT REPORTER: COURT'S ONE IN EVIDENCE.

(COURT'S EXHIBIT NUMBER ONE, NOTE FROM A JUROR TO THE COURT, IS NOW MARKED FOR IDENTIFICATION.)

THE COURT: OKAY, MR. STATEN, WE BROUGHT Y'ALL BACK UP HERE BECAUSE WE'RE GONNA DISCUSS A MATTER OF LAW AND THE SUPREME COURT PROBABLY THINKS THAT'S A CRUCIAL STAGE

IN THIS PROCEEDING SO YOU HAVE A RIGHT TO BE PRESENT.

OKAY. I UNDERSTAND THAT THE NEXT WITNESS WHO'S GONNA BE CALLED IN THE MORNING IS MICHELLE BUFF AND THAT SHE'S THE ONE WHO'S GONNA TESTIFY THAT MAURICE TOLD HER THAT HE DID IT.

MR. TAYLOR: THAT'S CORRECT.

THE COURT: AND WE DISCUSSED THIS EARLIER IN THE WEEK AND UNDER STATE V. DOCTOR, STATE V. McDONALD -- WHERE'S MY OTHER CASE? OH, YEAH, STATE V. COOPER, WE GET INTO THIRD PARTY GUILT. MAURICE IS UNAVAILABLE SO THE 804(B)(3), SOMEONE COULD TESTIFY WHAT MAURICE SAID BUT IF IT COMES FROM A CRIMINAL -- IF IT'S OFFERED TO EXCULPATE AN ACCUSED IN A CRIMINAL CASE, IT'S ONLY ADMISSIBLE IF IT'S CORROBORATED BY EVIDENCE WHICH CLEARLY INDICATES THE TRUSTWORTHINESS OF THE STATEMENT.

DOES EVERYBODY AGREE TO THAT?

MR. TAYLOR: THAT'S IT.

THE COURT: NOW, HERE'S THE RUB IN THIS THING, NOBODY HAS SAID THAT EITHER ONE OF THESE GENTLEMEN PULLED THE TRIGGER OR KILLED ANYBODY. SO THE QUESTION COMES UP TO ME, WHAT DIFFERENCE DOES IT MAKE WHETHER IT WAS THE GUY IN THE BLACK NORTHFACE JACKET OR THE GUY IN THE RACING JACKET?

MR. GASSER: THAT'S THE POINT I OBVIOUSLY -- I HOPE I MADE IT. MAYBE IN YOUR SLEEP YOU HEARD THAT -- MY VOICE

RINGING IN MY EAR. THAT WAS ONE OF THE MAJOR---

THE COURT: I MEAN I HEARD YOU SAY THAT. YOU CALLED IT IRRELEVANT. I WAS JUST TRYING TO FIGURE OUT WHAT DIFFERENCE DOES IT MAKE BECAUSE THEY'RE ACCUSED OF AIDING AND ABETTING THE PERSON -- THE PRINCIPAL. WHAT DIFFERENCE DOES IT MAKE WHO THE PRINCIPAL IS?

MR. TAYLOR: WELL, HERE IS -- HERE IS -- IT'S -- IT'S REALLY NOT THAT SIMPLE. McCANTS TODAY -- I'M SORRY, LUCIUS STATEN TODAY TESTIFIED THAT WHATEVER WAS GOING ON OUT THERE, THAT HE AND HIS BROTHER BOTH HAD WITHDRAWN. THEY WERE AWAY FROM WHATEVER ACTIVITY WAS GOING ON, YOU SEE?

SO NOW YOU'VE GOT SOMEBODY WHO SAYS, IN ADDITION TO THAT, THAT "I SAW THIS OTHER MAN SHOOT AND KILL PHILLIP LEE".

THE COURT: YOU'VE GOT TWO PEOPLE, McCANTS AND THE DEFENDANT DUSHUN---

MR. TAYLOR: THAT'S CORRECT.

THE COURT: ---THROUGH HIS STATEMENT---

MR. TAYLOR: RIGHT.

THE COURT: ---PUT INTO EVIDENCE BY THE POLICE OFFICERS THAT MAURICE DID THE SHOOTING.

MR. TAYLOR: CORRECT.

THE COURT: BUT STILL THE QUESTION IS WHAT DIFFERENCE DOES IT MAKE WHO DID THE SHOOTING?

MR. TAYLOR: WELL, IT MAKES ALL THE DIFFERENCE. BECAUSE IF THEY ARE NOT ASSOCIATED WITH THE SHOOTER AT THE TIME THAT HE DID THE SHOOTING---

THE COURT: ACCORDING TO HIS TESTIMONY, THEY WEREN'T ASSOC -- ASSOCIATED WITH EITHER ONE OF THEM.

MR. TAYLOR: ALL THE MORE REASON IT SHOULD COME IN.

MR. GASSER: BUT IT SHOULDN'T COME BECAUSE -- I MEAN, THE LAW THAT YOU'RE GONNA CHARGE THE JURY TOMORROW IS YATES VERSUS AIKEN WHICH IS MURDER DEFINED AS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR IMPLIED.

IN THE CONTEXT OF ACCOMPLICE LIABILITY FOR MURDER, THE ELEMENT OF MALICE WHICH MUST BE PROVED BY THE STATE IS THAT OF THE KILLER. THAT'S VERBATIM, WORD FOR WORD, OUT OF YATES V. AIKEN WHICH IS CHARGED IN EVERY ACCOMPLICE LIABILITY CASE.

NOT -- NOT THAT THE MALICE MUST BE PROVED AS THAT OF A SPECIFIC PERSON IN A SPECIFIC CASE. IT'S THAT OF THE KILLER. THAT'S WHY I SAID IT IN MY OPEN STATEMENT AND I'M GONNA SAY IT AGAIN. I MEAN, THE REALTY OF IT IS IS WHOEVER SHOT PHILLIP LEE IS REALLY NOT RELEVANT UNDER THE LAW. I MEAN, UNDER THE LAW IT'S NOT RELEVANT.

MR. TAYLOR: HOLD ON. YOU SEE, HERE'S THE PROBLEM. MR. GASSER'S JUMPING TO THE CONCLUSION THAT THIS JURY IS GOING TO DECIDE THAT THESE MEN ARE AIDERS AND ABETTORS.

MR. GASSER: NO, I'M NOT.

THE COURT: WELL, HE'S TRYING TO---

MR. TAYLOR: OR THEY ARE ACCOMPLICES.

THE COURT: WELL, THAT'S WHAT THE JURY'S GONNA HAVE TO DECIDE.

MR. TAYLOR: RIGHT.

THE COURT: THAT'S THE WHOLE ISSUE IN THIS CASE.

MR. TAYLOR: WELL, AND -- RIGHT. THAT'S RIGHT. AND IF THEY ARE NOT ACCOMPLICES, YOU SEE---

THE COURT: THEY CAN'T BE FOUND GUILTY.

MR. TAYLOR: WELL -- AND THEY CERTAINLY ARE LESS LIKELY TO BE FOUND GUILTY IF THE JURY KNOWS SOMEBODY ELSE SHOT AND KILLED THE GUY AND THEY ARE NOT ACCOMPLICES.

THE COURT: HE'S ALREADY STIPULATED THAT YOUR GUY DIDN'T SHOOT IT. HE MAINTAINS THAT MEL SIMS SHOT HIM. YOU MAINTAIN THAT MAURICE SHOT HIM.

MR. STRICKLER: AND I MAINTAIN I DON'T KNOW.

MR. GASSER: I ACTUALLY MAINTAIN I DON'T CARE. BUT FROM A STRATEGIC PROSPECTIVE -- I MEAN, UNDER THE LAW I DON'T CARE. IF THESE WERE TWELVE COMPUTERS IT WOULDN'T MATTER. THEIR NOT TWELVE COMPUTERS AND WE STRATEGICALLY -- WE STRATEGICALLY DECIDED -- I MEAN, THE JURY'S GONNA WANT TO KNOW, THE GOVERNMENT'S GONNA WANT TO HAVE A THEORY. WE THINK THEY'RE GONNA WANT US TO HAVE A THEORY AS TO WHO THE ACTUAL TRIGGER MAN IS. BUT UNDER THE LAW,

JUDGE, I DON'T CARE -- FOR THESE PROCEEDINGS, I DON'T CARE WHO SHOT PHILLIP LEE BECAUSE IT DOESN'T MATTER UNDER THE LAW---

MR. TAYLOR: I DO BECAUSE UNDER THE LAW IT DOES MATTER. IF THE JURY DECIDES THAT THESE MEN ARE NOT AIDERS AND ABETTORS, IT MATTERS EVERY BIT IN THE WORLD AS TO WHO THE SHOOTER WAS.

THE COURT: WELL, I'LL MAKE AN OBSERVATION. I DON'T THINK IT MAKES ANY DIFFERENCE. I'LL MAKE AN OBSERVATION. MR. LUCIUS STATEN HAS ALREADY TESTIFIED THAT HE KNEW MAURICE SANDERS.

MR. TAYLOR: OH, KNOWING THEM. WE DON'T DENY THAT THEY KNEW THEM.

THE COURT: BUT HE DIDN'T KNOW THE OTHER GUY. AND THE CHANCES OF GETTING TOGETHER WITH SOMEBODY YOU DIDN'T KNOW, ARE A LOT LESS LIKELY THAN GETTING TOGETHER WITH SOMEBODY YOU KNOW.

SO FROM A STRATEGY STANDPOINT, WHY DO YOU WANT TO PUT IN ON MAURICE WHEN IT REALLY DOESN'T MATTER WHO KILLED HIM. THEY -- THE JURY'S GONNA HAVE TO FIND THAT THEY AIDED AND ABETTED, MORE THAN MERE PRE -- NOT JUST THERE. IF THEY WERE JUST THERE, YOU CAN'T FIND THEM GUILTY---

MR. TAYLOR: I UNDERSTAND.

THE COURT: --- THAT THEY AIDED IN THIS PLAN, IN THE COMMISSION OF THIS CRIME.

MR. TAYLOR: BUT THAT DOESN'T -- IT DOESN'T CHANGE THE PROPOSITION THAT IF THE JURY DECIDES THEY ARE NOT ACCOMPLICES, IT IS EXTREMELY RELEVANT THAT SOMEONE ELSE SHOT AND KILLED, AND NOT EITHER OF THESE GUYS---

MR. GASSER: JUDGE---

MR. TAYLOR: FIRST OF ALL---

THE COURT: WELL, LET ME ASK YOU THIS---

MR. TAYLOR: ---YOU'VE GOTTA UNDERSTAND THIS -- THIS CASE IS TRIED IN THE CONTEXT OF THEIR THEORY.

THE COURT: THEIR THEORY IS SIMPLY THAT LIMEL SIMS SHOT PHIL LEE AND THESE GUYS WERE PART OF IT. THAT'S THEIR THEORY.

MR. GASSER: WELL, ACTUALLY OUR THEORY IS IS THAT THESE GUYS CONTRIBUTED -- THESE GUYS AIDED AND ABETTED THE SHOOTER. THAT'S OUR THEORY. THESE GUYS AIDED AND ABETTED THE SHOOTER. THAT'S THEORY NUMBER ONE. THAT'S THE MAIN PREMISE.

WE, FROM A STRATEGIC PERSPECTIVE, ARE ASSUMING THAT, YEAH, THE JURY'S PROBABLY GONNA WANT TO KNOW WHO THE SHOOTER IS BEFORE THEY -- THEY MAY WANT TO KNOW THAT, THEY MAY NOT.

BUT UNDER THE LAW THEY DON'T HAVE TO KNOW THAT. AND SO MY POSITION IS IS THAT UNDER THE LAW, WHEN THE JURY'S BACK THERE -- BECAUSE YOU'RE GONNA CHARGE THEM. I MEAN, I'M GONNA SAY IT IN MY CLOSING ARGUMENT AND I'M GONNA

FOLLOW THE LAW. I'M ASSUMING YOU'RE GONNA CHARGE THE LAW WHICH IS WHEN YOU'RE DECIDING WHETHER OR NOT THESE DEFENDANTS ARE GUILTY AS AIDERS AND ABETTORS, THAT THE MALICE YOU MUST FIND IS THAT OF THE SHOOTER, WHOEVER THE SHOOTER MAY BE.

MR. TAYLOR: WELL, YOUR HONOR, IF HE REALLY DOESN'T CARE WHO THE SHOOTER IS, WHY IS IT THAT HE FIGHTS SO HARD TO KEEP THIS EVIDENCE OUT.

MR. GASSER: I SAID FROM A LEGAL PERSPECTIVE. FROM A LEGAL PERSPECTIVE. I UNDERSTAND WHY YOU'RE---

MR. TAYLOR: HE FIGHTS TO KEEP IT OUT BECAUSE HE KNOWS IF IT COMES IN IT'S VERY RELEVANT AND IT COULD LEAD TO AN ACQUITTAL.

MR. GASSER: NO, NOT AN ACQUITTAL. IF IT COMES IN IT'S JUST MORE MUDDYING THE WATERS THAT I'VE GOT TO DEAL WITH WITH ALL THE OTHER MUDDYING THE WATERS THAT I'VE GOT TO DEAL WITH, LIKE I'VE GOT OT DEAL WITH IN EVERY CASE.

AND I MEAN, LIKE I'M GONNA ARGUE TO THE JURY, ALL THIS TRYING TO PUT IT ON MAURICE IS AN ATTEMPT TO FOCUS THE JURY'S ATTENTION AWAY FROM THE CONDUCT OF THEIR CLIENTS. THAT'S A QUOTE YOU'RE GONNA HEAR TOMORROW IN FRONT OF THE JURY.

BUT I JUST DON'T NEED -- I'VE ALREADY GOT THIS PILE THAT I'VE GOT TO DEAL WITH IN FRONT OF THEM. I DON'T NEED THIS PILE TO DEAL WITH IN FRONT OF THEM. THAT'S WHY I'M

TRYING TO KEEP IT OUT.

NOT TO MENTION -- I MEAN IN STATE VERSUS FORNEY, MY GOD, FIVE PEOPLE TOOK THE -- IN AN IN CAMERA HEARING TOOK THE WITNESS STAND TO SAY THAT THE PERSON -- ANOTHER PERSON ADMITTED TO DOING THE KILLING AND OUR SUPREME COURT SAID THAT WAS CORROBORATIVE ENOUGH, FIVE PEOPLE.

THE COURT: WELL, HERE'S WHAT WE'VE GOT BY WAY OF CORROBORATION IN THIS CASE. WE'VE GOT THE TESTIMONY OF BRANDON McCANTS SAYING, "I SAW MAURICE SHOOT"; RIGHT?

MR. TAYLOR: CORRECT.

THE COURT: SO THAT'S REALLY ALL WE HAVE.

MR. TAYLOR: WELL, NO. NO. NO. NO. NO. WE ALSO HAVE---

THE COURT: WE HAVE YOUR CLIENT'S STATEMENT.

MR. TAYLOR: WELL, BUT WE ALSO HAVE EVIDENCE THAT NO MATTER WHAT WAS GOING ON, THAT BOTH OF THESE MEN HAD WITHDRAWN. YOU CAN'T JUST IGNORE THAT EVIDENCE AND SAY THAT'S NOT IN THE CASE BECAUSE IT IS IN THE CASE.

MR. GASSER: HE'S TALKING ABOUT WHAT EVIDENCE CORROBORATES.

THE COURT: WHAT EVIDENCE OF CORROBORATION THAT -- THAT MAURICE MADE THE STATEMENT, "I DID THE SHOOTING"?

MR. TAYLOR: THE FACT THAT HE ADMITTED IT, OF COURSE, TO MICHELLE BUFF.

MR. GASSER: LIMEL SIMS---

THE COURT: NOW THAT'S---

MR. TAYLOR: NOW, ALSO, WAIT A MINUTE NOW, THE FACT THAT HE FURTHER GOT HER TO DO TWO THINGS, CARRY HIM TO LOOK FOR THE WEAPON AND CARRY HIM TO THE BUS STATION SO THAT HE COULD ESCAPE.

MR. GASSER: SAYS WHO?

MR. TAYLOR: SAYS HER.

MR. GASSER: OKAY, SAYS HER---

MR. TAYLOR: HER STATEMENT.

MR. GASSER: SAYS HER BUT WAS LIMEL SIMS'S GIRLFRIEND, YOU WOULDN'T DENY THAT. HOLD ON A MINUTE, WHO ADMITTED TO ME LAST WEEK SHE'S STILL IN LOVE WITH HIM BECAUSE SHE WAS IN LOVE WITH HIM FOR THREE YEARS. SO IT'S LIMEL SIMS'S GIRLFRIEND, WHO THE STATE'S SAYING IS THE TRIGGER MAN IN OUR THEORY AND OUR CASE, WHO DIDN'T COME FORWARD TO THE POLICE. THEY HAD TO GO -- UNTIL JANUARY THE 24TH. AND WHEN SHE WAS INTERVIEWED ON JANUARY THE 24TH, SHE MADE NO MENTION OF MAURICE SANDERS ADMITTING THIS. AND NOW ALL OF A SUDDEN TWO DAYS LATER, SHE DOES MAKE MENTION OF HIM.

MR. TAYLOR: SOUNDS LIKE A JURY ARGUMENT BUT WHAT DOES IT HAVE TO DO WITH THE LEGAL ISSUE?

MR. GASSER: WHETHER OR NOT -- WHERE IS THE CORROBORATION OF MICHELLE SIMS (SIC)? WE'VE GOT TO LOOK AT THE CREDIBILITY OF MICHELLE SIMS (SIC). THAT'S WHAT

HE'S GOT TO DO UNDER THE LAW. WHERE'S THE CORROBORATION?

MR. TAYLOR: WELL, HOLD ON ONE SECOND NOW. HOLD ON ONE SECOND. YOU KNOW -- HE SAYS THAT SHE'S GONNA SAY, I WAS IN LOVE WITH MEL SIMS. DOES THAT NEGATE THAT MAURICE SANDERS SAID TO HER WHAT SHE -- WHAT SHE SAYS HE SAID?

THE COURT: WELL, HERE'S WHAT I SUGGEST YOU DO. YOU'VE GOT TO GO BACK AND READ ALL THESE CASES. AND IT LOOKS LIKE YOU'RE RIGHT, JUSTICE PLEICONES DID WRITE THE OPINION IN THE STATE VERSUS McDONALD. THE ONLY THING HE CLEARED UP IN THERE, HE SAID YOU DON'T -- IT DOESN'T GO TO THE TRUTH OF THE STATEMENT'S CONTENTS BUT THAT WHETHER THE STATEMENT WAS MADE BUT IN THE SAME VEIN, YOU HAVE TO HAVE SOME CONSIDERATION OF WHETHER IT'S TRUE WHEN YOU'RE LOOKING AT THIS CORROBORATION THING.

AND IF YOU GO THROUGH ALL THOSE CASES, AND I'VE GOT A STACK OF THEM HERE SOMEWHERE, DEALING WITH---

MR. TAYLOR: KINLOCK, DOCTOR AND---

THE COURT: HERE IT IS. YEAH, ALL THOSE THINGS. THEY ALL GO THROUGH ALL THE FACTORS THAT WERE BEFORE THE COURT WHEN THEY DECIDED THAT.

MR. TAYLOR: YES, SIR, THEY DO.

THE COURT: YEAH.

MR. TAYLOR: AND IF YOU---

THE COURT: IF YOU LOOK AT CORROBORATION, YOU TAKE OUT MICHELLE BUFF, OKAY? SO WHAT OTHER CORROBORATION DO

YOU HAVE THAT THE STATEMENT WAS MADE, THAT MAURICE SANDERS SAID, "I DID IT"?

YOU'VE GOT BRANDON McCANTS SAYING, "I SAW MAURICE DO IT"; RIGHT?

MR. GASSER: TWO MONTHS AFTER THE FACT.

MR. TAYLOR: IT DOESN'T MAKE ANY DIFFERENCE---

MR. GASSER: AND HE'S NOT---

MR. TAYLOR: ---WHEN HE SAW -- YOU KNOW YOU GET INTO HIS CREDIBILITY---

MR. GASSER: BUT YOU HAVE TO---

THE COURT: WELL, I HAVE TO LOOK AT CREDIBILITY TOO. THESE CASES LOOK AT CREDIBILITY.

MR. TAYLOR: WELL, BUT I MEAN---

THE COURT: YOU KNOW, WHAT YOU HAVE TO PROVE, YOU HAVE TO PROVE THAT THERE'S EVIDENCE CLEARLY INDICATES THE TRUSTWORTHINESS OF THE STATEMENT.

MR. TAYLOR: WELL, I THINK I'M GONNA HAVE TO PUT HER UP THEN AND EXAMINE HER, AREN'T I?

THE COURT: YOU GOTTA -- NO, WHEN YOU'RE GOING ALONG THESE CASES, STATE V. DOCTOR, STATE V. McDONALD, STATE V. EVANS, ALL THESE CASES, THE ISSUE IS WHETHER THE STATEMENT WAS MADE. YOU'VE GOT TO HAVE SOME CORROBORATION THAT THE STATEMENT WAS MADE AND TAKE MICHELLE OUT OF THE PICTURE. BECAUSE THE WHOLE QUESTION IS IF IT'S NOT CORROBORATED, SHE CAN'T SAY IT.

SO SHE DOESN'T COUNT TOWARD CORROBORATION, OKAY? THE ONLY OTHER PERSON THAT SAID MAURICE DID IT WAS BRANDON McCANTS. HE SAID, "MAURICE SHOT HIM".

MR. TAYLOR: SO FAR.

THE COURT: WHAT OTHER -- WHAT OTHER CORROBORATION DO WE HAVE? AND THEN BRANDON McCANTS COMES IN TWO MONTHS LATER AND SAYS, "MAURICE DID IT".

MR. TAYLOR: WELL, AFTER HE TRIED TO GET THE DETECTIVE TO RETURN HIS PHONE CALLS.

THE COURT: IT WAS NEVER ESTABLISHED WHEN HE FIRST TRIED -- YES, IT WAS. MARCH WAS THE FIRST TIME HE TRIED TO CONTACT THE POLICE?

MR. TAYLOR: NO, SIR.

THE COURT: THAT'S WHAT HE SAID.

MR. GASSER: THAT'S WHAT HE TESTIFIED TO ON CROSS.

MR. TAYLOR: HE TESTIFIED THAT HE CALLED TWICE AND LEFT MESSAGES FOR OFFICER MEAD AND HE CALLED BACK IN MARCH WHEN I CONTACTED HIM AND SAID, "TRY AGAIN"---

THE COURT: BUT ON CROSS-EXAMINATION HE SAID, "THE FIRST TIME THEY TRIED TO CONTACT ME WAS MARCH", THAT'S WHAT HE SAID.

MR. TAYLOR: WELL, I SAID ON DIRECT EXAMINATION WHAT HE SAID.

THE COURT: HE CLEARED IT UP ON CROSS.

MR. TAYLOR: WELL, I MEAN---

THE COURT: HE COULD HAVE CALLED HIM MARCH 1ST, MARCH 2ND, TALKED TO YOU, CALLED HIM ON MARCH 5TH. BUT HE SAID THE FIRST TIME HE TRIED TO CALL WAS MARCH. SO IS THAT EVIDENCE THAT CLEARLY INDICATES HE'S TRUSTWORTHY? I'M NOT SO SURE.

MR. GASSER: BUT THEN IF YOU LOOK AT ALL THE EVIDENCE IN THE CASE, THE GUY HE SAID DID IT IS CAUGHT TWO MINUTES LATER WEARING A GRAY SWEATSHIRT WITH A GUNSHOT RESIDUE TEST THAT'S NEGATIVE WITH AN AFRO WHEN ALL THE OTHER WITNESSES INDICATED THE SHOOTER HAD A BLACK NORTHFACE JACKET ON AND BRAIDS, WHICH GOES TO THE CRE -- LACK OF CREDIBILITY OF BRANDON McCANTS.

THE COURT: IF YOU PUT ALL THAT TOGETHER, INCLUDING THAT LAST THING WHICH WAS HE HAD CLEAN HANDS -- WELL, YOU KNOW, THEY DID THE SWABS, FOUND NO STUFF ON HIM, PLUS EVERYTHING ELSE, YOU DON'T MEET THE TEST AS BEING CLEAR EVIDENCE OF TRUSTWORTHINESS.

MR. TAYLOR: WELL, I'VE GOTTA MAKE THE PROFFER.

THE COURT: WELL YOU CAN MAKE THE PROFFER BUT WHAT I WAS THINKING ABOUT IN MY ORIGINAL QUESTION, WHAT -- WHAT DIFFERENCE DOES IT MAKE WHO THE SHOOTER IS?

MR. TAYLOR: WELL, JUDGE, IT MAKES ALL THE DIFFERENCE IN THE WORLD.

THE COURT: WELL, I TELL YOU WHAT I'M GONNA DO. I'M GONNA GIVE YOU ABOUT FIVE MINUTES IN THE MORNING TO

COME BACK AND CONVINCE ME OTHERWISE. I'M PROBABLY GONNA SAY IT'S NOT ADMISSIBLE BECAUSE IT'S NOT CORROBORATED.

MR. TAYLOR: BUT CERTAINLY YOU'RE GONNA ALLOW ME TO PUT HER ON THE STAND AND GET HER TESTIMONY IN THE RECORD?

THE COURT: WHY DON'T WE JUST -- WHY DON'T YOU JUST TELL ME WHAT SHE WOULD SAY AND LET THAT CONSTITUTE A PROFFER?

MR. GASSER: OR PUT HER STATEMENT---

MR. TAYLOR: WELL, WE PUT HER STATEMENTS IN.

THE COURT: MARK THAT---

MR. TAYLOR: SHE HAS WRITTEN STATEMENTS.

THE COURT: ALL RIGHT. LET'S PUT THAT IN AS A COURT'S I.D. -- FOR I.D.

MR. TAYLOR: ALL RIGHT.

THE COURT: ALL RIGHT. THAT WOULD BE HER PROFFER. DOES EVERYBODY AGREE THAT'S A SUFFICIENT PROFFER?

MR. GASSER: I AGREE TO THAT.

MR. TAYLOR: I AGREE.

THE COURT: OKAY. BUT IF YOU CAN CONVINCE ME OTHERWISE---

MR. TAYLOR: THERE'S TWO STATEMENTS.

THE COURT: OKAY

MR. TAYLOR: BOTH OF THEM?

THE COURT: YEAH.

MR. GASSER: YEAH, I DEFINITELY WANT THEM IN. IN

THE FIRST STATEMENT SHE DOESN'T SAY IT AND IN THE SECOND STATEMENT SHE DOES. SO I CLEARLY WANT BOTH OF THEM IN.

THE COURT: I READ ALL THESE CASES. I'VE GOT ALL THESE CASES I MADE COPIES OF.

MR. TAYLOR: I KNOW, I READ THEM TO.

THE COURT: I READ THEM ALL.

MR. TAYLOR: YOU AND I JUST INTERPRET THEM DIFFERENTLY APPARENTLY, SO FAR.

THE COURT: BUT IF YOU CAN THINK OF SOMETHING IN A SHORT TIME TO CONVINCE ME TOMORROW, I'LL LET HER TESTIFY AND MAKE THAT STATEMENT OTHERWISE. BUT I STILL GO BACK TO I DON'T THINK IT MAKES A DIFFERENCE BECAUSE, YOU KNOW, THEY'VE GOT TO PROVE THESE GUYS HAD SOME ACTIVE PARTICIPATION IN THAT CRIME.

MR. TAYLOR: WELL, I UNDERSTAND THAT BUT I'M JUST NOT GONNA CONTINUE TO BEAT THAT HORSE---

THE COURT: AND I THINK THAT'S A TOUGH BURDEN.

MR. TAYLOR: WELL---

THE COURT: YOU GET A COUPLE OF WITNESSES SAYING A COUPLE OF THINGS BUT OTHER THAN THAT EVERYBODY GOT A DIFFERENT RECOLLECTION OF WHAT HAPPENED. BUT OF COURSE, THAT'S NORMAL.

MR. TAYLOR: IT IS NORMAL.

MR. GASSER: AND, YOUR HONOR, I---

MR. TAYLOR: AND IT'S ALSO NORMAL FOR WITNESSES TO

GET CONFUSED ON CROSS-EXAMINATION AND SAY SOMETHING THAT'S SLIGHTLY DIFFERENT FROM WHAT THEY SAID ON DIRECT.

THE COURT: YES---

MR. TAYLOR: THE JURY COULD BELIEVE WHAT THEY SAID ON DIRECT OR WHAT THEY SAID ON CROSS. THEY CAN BELIEVE ALL, SOME OR NONE.

THE COURT: THAT'S RIGHT. AND SOMETIMES PEOPLE JUST GET CONFUSED PERIOD.

MR. TAYLOR: THAT'S RIGHT.

THE COURT: EVEN ON DIRECT.

MR. GASSER: I THINK---

MR. TAYLOR: I'VE BEEN THAT WAY A FEW TIMES.

THE COURT: I'M -- I'M CONFUSED RIGHT NOW.

MR. TAYLOR: I AM TOO.

THE COURT: SO I'M QUITTING FOR THE DAY.

WELL, IF YOU HAVE ANY EXTRA CHARGES YOU WANT DONE, WE'LL GO OVER A QUICK CHARGE IN THE MORNING.

MR. TAYLOR: THANK YOU, VERY MUCH.

(COURT IS IN RECESS FOR THE DAY.)

FRIDAY, MARCH 1, 2002:

(COURT'S EXHIBIT NUMBER TWO, DEFENDANT LUCIUS STATEN'S REQUEST TO CHARGE, IS NOW MARKED FOR IDENTIFICATION.)

THE BAILIFF: COURT COME TO ORDER. ALL RISE, PLEASE.

THE COURT: THANK YOU. PLEASE BE SEATED.

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE COURT REPORTER, BUT OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. LET'S GO ON THE RECORD FOR A MINUTE. MR. TAYLOR, I THINK YOU ADVISED ME UP HERE AT THE BENCH THAT YOUR CLIENT HAS CHOSEN NOT TO TESTIFY?

MR. TAYLOR: THAT IS CORRECT, YOUR HONOR.

THE COURT: THAT'S YOUR CHOICE, MR. STATEN?

MR. D. STATEN: YES, SIR.

THE COURT: OKAY. ALL RIGHT. BRING THE JURY IN, PLEASE.

(JURY IN AT 9:31 A.M.)

THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

THE COURT: THANK YOU. GOOD MORNING, EVERYBODY.

THE JURY: GOOD MORNING.

THE COURT: I'M SORRY WE KEPT YOU WAITING BUT I'VE GOT SOME GOOD NEWS FOR YOU. LAST NIGHT OR THIS MORNING WE WERE ABLE TO RESOLVE SOME ISSUES IN THIS CASE SO WE'VE ELIMINATED ABOUT TWO HOURS WORTH OF TESTIMONY. SO WE'RE GONNA HAVE A SHORT WITNESS NOW AND THEN WE'RE GONNA SEND YOU BACK TO THE JURY ROOM AND WE'RE GONNA HAVE A CHARGE CONFERENCE WHERE WE GO OVER ALL THE LAW. AND THEN WE'LL COME BACK IN AND HAVING CLOSING ARGUMENTS AND INSTRUCTION ON THE LAW. SO YOU SHOULD BE THROUGH A LOT EARLIER. OKAY?

ALL RIGHT, MR. TAYLOR.

MR. TAYLOR: THANK YOU, VERY MUCH. WE CALL LATISHA DAVIS.

(**LATISHA E. DAVIS**, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE CLERK: PLEASE HAVE A SEAT HERE. STATE YOUR FULL NAME FOR THE RECORD.

MS. DAVIS: LATISHA ELAINE DAVIS.

DIRECT EXAMINATION BY MR. TAYLOR:

Q MS. DAVIS, DO YOU KNOW DUSHUN STATEN?

A YES, I DO.

Q ARE YOU HIS GIRLFRIEND?

A YES.

Q AND DID YOU SEE HIM ON THE NIGHT OF JANUARY 15TH, 2001?

A YES.

Q AND WHERE WAS THAT?

A THAT WAS AT A HOTEL.

Q ALL RIGHT. AND WHAT TIME APPROXIMATELY DID HE MEET YOU AT THE HOTEL?

A MAYBE AROUND 10:30 OR 11.

Q ALL RIGHT. AND DID I ASK YOU TO BRING WITH YOU A PARTICULAR GARMENT TODAY?

A YES, SIR.

Q WHAT IS THAT?

A THIS IS A SWEATER HE WAS WEARING THE NIGHT THAT I WAS WITH HIM.
Q ALL RIGHT. AND THAT IS A BROWN AVERIX SWEATER---
A YES, SIR.
Q ---IS THAT CORRECT?
A UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

MR. TAYLOR: YOUR HONOR, WE OFFER THIS.

MR. GASSER: NO OBJECTION.

MR. TAYLOR: THANK YOU, MS. DAVIS. THAT'S ALL I HAVE.

THE COURT: MR. STRICKLER, ANY QUESTIONS?

MR. STRICKLER: NO, SIR.

THE COURT: MR. GASSER, ANY QUESTIONS?

MR. GASSER: NO, SIR.

COURT REPORTER: DUSHEN STATEN'S EXHIBIT NUMBER TEN.

(DEFENDANT DUSHUN STATEN'S EXHIBIT NUMBER TEN, BROWN SWEATER OF DUSHUN STATEN, IS NOW ENTERED INTO EVIDENCE WITHOUT OBJECTION.)

THE COURT: THAT'S IT; RIGHT? THAT'S IT FOR THE JURY; RIGHT?

MR. TAYLOR: YES, SIR.

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THAT WAS THE LAST TESTIMONY YOU'RE GONNA HEAR IN THIS CASE. NOW IT'S GONNA TAKE US ABOUT FIFTEEN OR TWENTY MINUTES TO

GO THROUGH ALL THESE LEGAL CHARGES SO WE'LL GET IT RIGHT.

SO IF YOU'LL GO BACK TO YOUR JURY ROOM. IF YOU NEED SOME MORE COFFEE OR ANYTHING, JUST TELL THE BAILIFFS, THEY'LL GET IT FOR YOU. AND THEN WE'LL COME BACK IN AND WE'LL HAVE CLOSING ARGUMENTS AND I WILL INSTRUCT YOU ON THE LAW AND LET YOU DECIDE THIS CASE.

AND FOR THE ALTERNATES' BENEFIT, ONCE I CHARGE THE JURY ON THE LAW, IF ALL TWELVE OF THEM ARE STILL HERE, THEN I WILL RELEASE THE ALTERNATES FROM THIS TRIAL. OKAY?

SO PLEASE GO BACK TO YOUR JURY ROOM AND BE PATIENT AND TALK ABOUT THE WEATHER AND...

(JURY OUT AT 9:55 A.M.)

THE COURT: ALL RIGHT. WHO WANTS TO PUT SOMETHING ON THE RECORD?

MR. TAYLOR: YES, YOUR HONOR, WE EARLIER IN THE WEEK MARKED THE TWO STATEMENTS OF THE WITNESS, CHRISTOPHER SIMS. YOU WILL RECALL THAT WE ADVISED THE COURT THAT HE WAS SUBPOENAED TO COME TESTIFY IN THIS TRIAL. HE IS ON DIALYSIS THREE DAYS A WEEK ACCORDING TO INFORMATION PROVIDED TO BOTH MY OFFICE AND TO MR. GASSER'S OFFICE, THOSE DAYS BEING MONDAY, WEDNESDAYS AND FRIDAYS.

HE HAD CALLED MY OFFICE AND I HAD ASKED HIM THEN TO BE HERE ON TUESDAY SINCE THAT WOULD NOT BE A DAY THAT HE HAD THE DIALYSIS AND WE'D SORT OF SEE WHERE WE WERE. WE GOT A CALL THEN ON TUESDAY MORNING THAT HE WAS IN THE

HOSPITAL WITH CHEST PAINS AND OF COURSE WE WERE UNABLE TO GET HIM TO THE COURTROOM.

HIS STATEMENTS SPEAK FOR THEMSELVES. WE ASK THE COURT TO GIVE US AN OPPORTUNITY TO TAKE HIS VIDEO TAPED TESTIMONY AT THE HOSPITAL SINCE HE COULD NOT COME HERE. I UNDERSTAND THAT YOU RULED FROM THE BENCH, TO BE PUT ON THE RECORD NOW, THAT YOU WOULD NOT ALLOW THAT BECAUSE YOU DID NOT FEEL THAT THE STATEMENTS WERE GERMANE TO THE CASE.

AND SO I JUST WANTED TO PUT THAT ON THE RECORD.

THE COURT: ALL RIGHT. AND THEY'VE BEEN MARKED AS COURT'S I.D. SO THAT WOULD BE YOUR PROFFER OF WHAT HE WOULD SAY IF HE WAS CALLED---

MR. TAYLOR: THAT IS CORRECT, YOUR HONOR.

THE COURT: OKAY.

MR. TAYLOR: WE HAVE THE OTHER ISSUE THAT -- YOU KNOW, IT'S BEEN SUCH A LONG WEEK WE ALMOST FORGOT THAT I WAS GONNA HAVE ANOTHER FIVE MINUTES THIS MORNING ON THE MICHELLE BUFF THING.

I DON'T HAVE A WHOLE LOT MORE TO SAY.

THE COURT: OKAY.

MR. TAYLOR: EXCEPT THIS, YESTERDAY WHEN WE TALKED ABOUT CORROBORATION AND WHAT IS CORROBORATION AND WHAT IT IS THAT WE ARE TO LOOK AT, IT SEEMED TO BE THE COURT'S OPINION THAT YOU HAVE TO TAKE MICHELLE BUFF COMPLETELY OUT OF THE PICTURE IN THE ANALYSIS OF WHETHER THERE'S

CORROBORATION OR NOT.

AND I BELIEVE THAT THE COURT'S VIEW IS THAT YOU MAYBE HAD TO HAVE SOMEONE ELSE HEAR THE STATEMENT AS WELL. I'M NOT SURE IF THAT'S THE COURT'S VIEW OR NOT.

BUT IN ANY EVENT, IT'S OUR VIEW THAT YOU DON'T TAKE THE WITNESS OUT OF THE SCENE FOR THE PURPOSES OF DECIDING WHETHER YOU HAVE AN 804(B)(3) EXCEPTION TO THE HEARSAY RULE. WHAT YOU LOOK AT IS YOU LOOK AT WHETHER THERE IS CORROBORATING EVIDENCE OF HER STATEMENT, THAT IS SOMETHING THAT WOULD CORROBORATE WHAT SHE HAS SAID AND THAT HE SAID THAT.

AND AGAIN I POINT TO THE FACT THAT THERE WAS MORE THAN THE STATEMENT. THAT HE ASKED HER TO TAKE HIM TO THE BUS STATION WHERE HE COULD FLEE THE STATE OF SOUTH CAROLINA. AND THAT HE ASKED HER TO CARRY HIM TO GO LOOK FOR THE MURDER WEAPON WHICH HE SAID HE USED TO KILL PHILLIP LEE.

AND WITH THAT, I HAVE NO -- NOTHING ELSE TO SAY. I'VE SAID IT ALL

THE COURT: I'LL JUST ADD ONE LITTLE THING. AND WHEN I SAID YOU HAD TO TAKE MICHELLE BUFF'S TESTIMONY OUT OF THE EQUATION, WHAT NEEDED TO BE CORROBORATED IS MAURICE'S STATEMENT THAT HE KILLED THE DECEASED. THAT'S THE STATEMENT WE'RE TRYING TO GET IN. THAT'S UNDER 804(B)(3).

MR. TAYLOR: THAT'S CORRECT.

THE COURT: ALL RIGHT. SO SHE'S THE ONE THAT'S GONNA SAY,"HE SAID THIS TO ME". SO WHEN YOU'RE TRYING OT FIND CORROBORATION, YOU CAN'T LOOK AT THOSE TWO PEOPLE. YOU'VE GOTTA FIND OTHER EVIDENCE WHICH CLEARLY CORROBORATES THE TRUTH -- TRUSTWORTHINESS OF THAT STATEMENT. THAT'S WHY I SAID THAT.

MR. TAYLOR: AND THAT WOULD HAVE BEEN BRANDON McCANTS.

THE COURT: YEAH, BRANDON McCANTS.

MR. TAYLOR: SAY, "I SAW HIM SHOOT THIS GUY AND KILL HIM".

THE COURT: YEAH, SO THAT'S---

MR. TAYLOR: THAT WOULD HAVE BEEN THE OTHER CORROBORATION.

THE COURT: THAT'S THE ONLY OTHER CORROBORATION EXCEPT FOR YOUR CLIENT AND THAT NECESSARILY IS -- IT WOULD BE SELF-SERVING AND IS NOT ENTITLED TO WHOLE BUNCH OF TRUSTWORTHINESS BECAUSE HE'S ON TRIAL FOR THIS CASE.

ANYWAY, SO WE'RE GONNA KEEP -- MICHELLE BUFF'S NOT GONNA BE ALLOWED TO MAKE THAT STATEMENT.

MR. TAYLOR: ALL RIGHT. AND OF COURSE, YOUR HONOR, I WANT TO PUT ON THE RECORD BUT FOR THAT RULING, WHICH I ANTICIPATED, I DO BELIEVE THAT MY CLIENT PROBABLY WOULD TESTIFY IN THIS TRIAL. BUT AS IT IS, HE'S DECIDED NOT TO

TESTIFY.

THE COURT: IN OTHER WORDS, IF I LET MICHELLE BUFF TESTIFY, YOUR CLIENT'S GONNA TESTIFY?

MR. TAYLOR: HE MIGHT. HE MAY. THAT PLAYS INTO THE EQUATION.

THE COURT: WELL, SOME APPELLATE COURT WILL HAVE FUN WITH THAT ONE.

ALL RIGHT. Y'ALL WANT TO GO OVER THE CHARGES OR YOU'VE GOT ANOTHER STIPULATION, I BELIEVE?

MR. GASSER: WELL, NO, JUST AT THE BEGINNING WHEN THE JURY COMES BACK WE FORGOT TO STIPULATE TO THE PHOTOS THAT YOU---

MR. TAYLOR: OH, I THOUGHT WE WERE GONNA DO THAT WHEN THEY CAME BACK.

MR. GASSER: OKAY, THAT'S FINE. THAT'S FINE.

THE COURT: ALL RIGHT. I'M GONNA USE THE INDICTMENTS FOR THE VERDICT FORMS.

NOW, HE MADE -- HE MADE A POINT PRE-TRIAL THAT THEY CALL DUSHUN, MALIK ALI (PHONETICALLY).

MR. GASSER: YOU CAN BLACK IT OUT OR WHITE IT OUT WOULD BE THE BETTER THING.

THE COURT: I'LL JUST BLACK THAT OUT, HOW ABOUT THAT?

MR. TAYLOR: AS LONG AS THERE'S JUST -- THEY CAN'T HOLD IT UP TO A LIGHT AND READ WHAT WAS THERE.

THE COURT: THESE ARE PRETTY THICK PAPERS. I'LL CHECK---

MR. TAYLOR: VERY GOOD.

THE COURT: I'LL CHECK IT THOUGH.

MR. TAYLOR: ALL RIGHT, SIR.

THE COURT: Y'ALL WANT ME TO GO OVER THE CHARGES.

MR. STRICKLER: CERTAINLY, SIR.

THE COURT: WELL, MY GENERAL CHARGE COVERS THIS: PRESUMPTION OF INNOCENCE, REASONABLE DOUBT AND I DO NOT CHARGE HESITATE TO ACT. MY REASONABLE CHARGE SIMPLY SAYS: "THAT THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT. AND ANY REASONABLE DOUBT YOU HAVE IN YOUR DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE DEFENDANT. THE DEFENDANT IS ENTITLED TO ANY REASONABLE DOUBT. A REASONABLE DOUBT MAY EXIST BECAUSE OF THE EVIDENCE AND TESTIMONY IN THE CASE OR FROM THE LACK OF EVIDENCE AND TESTIMONY IN THE CASE. IF YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OF THE DEFENDANT, HE IS ENTITLED TO THAT DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL."

MR. STRICKLER: I FULLY ANTICIPATED THAT BEING YOUR CHARGE. I SUBMITTED, I BELIEVE -- AND, YOUR HONOR, I APOLOGIZE FOR THE FORM THESE WERE IN. THEY HAD A COVER SHEET ON THEM---

THE COURT: THAT'S ALL RIGHT.

MR. STRICKLER: I WAS TRYING TO DO MANY THINGS AT ONCE. I BELIEVE I SUBMITTED A REQUEST REGARDING---

THE COURT: STATE V. MANNING?

MR. STRICKLER: STATE V. MANNING. I UNDERSTAND YOU'RE NOT CHARGING THIS. I JUST -- LET THE RECORD REFLECT THAT I MAKE THAT REQUEST.

THE COURT: OKAY.

MR. STRICKLER: ADDITIONALLY, YOUR HONOR, I'VE GOT A LAW REQUEST ON CIRCUMSTANTIAL EVIDENCE IN THERE. THAT WOULD BE MY REQUEST THAT YOU CHARGE THE FULL CIRCUMSTANTIAL CHARGE. MY UNDERSTANDING IS YOUR HONOR PROBABLY WON'T DO THAT EITHER BUT I JUST WANT THE RECORD TO REFLECT THAT I'M MAKING THE REQUEST REGARDING THAT. I UNDERSTAND THE RECENT CASE LAW REGARDING CIRCUMSTANTIAL EVIDENCE.

THE COURT: YEAH, I'M PROBABLY GONNA CHARGE THE RECENT CASE.

MR. STRICKLER: YES, SIR. I FIGURED THAT.

MR. TAYLOR: ARE WE TALKING ABOUT THE STATE VERSUS CHERRY?

THE COURT: NO, GRIPPON.

MR. STRICKLER: GRIPPON.

MR. TAYLOR: OH, OKAY.

MR. STRICKLER: YOU WILL CHARGE YOUR GRIPPON, JUST FOR THE RECORD?

THE COURT: I'M GONNA CHARGE GRIPPON.

MR. STRICKLER: I'VE GIVEN YOU THAT SO THE RECORD WILL REFLECT THAT I'M ASKING YOU TO CHARGE THE OLD STUFF.

THE COURT: OKAY.

MR. STRICKLER: WITH THE FULL UNDERSTANDING YOU'RE GONNA CHARGE---

THE COURT: OH, YEAH. WE'VE GOT TO MAKE A GOOD RECORD.

MR. STRICKLER: SO I DIDN'T MEAN TO INTERRUPT YOU, YOUR HONOR. YOU WERE TELLING US WHAT YOU WERE GONNA CHARGE. I'M SORRY.

THE COURT: ALL RIGHT. REASONABLE DOUBT THEN CREDIBILITY OF WITNESSES. THAT I HAVE NO BIAS. YOU HAVE TO TAKE THE LAW AS I GIVE IT TO YOU, CIRCUMSTANTIAL EVIDENCE, MURDER, LYNCHING.

MR. STRICKLER: THEN IF I COULD ADDRESS THE CHARGES THAT I'VE SUBMITTED TO YOU?

THE COURT: OKAY.

MR. STRICKLER: THAT WOULD BE IN ADDITION TO THAT. AND I'LL JUST GO BY PAGE.

THE FIRST IS REQUESTING A CHARGE ON PRIOR INCONSISTENT STATEMENTS, THEY MAY BE TAKEN AS -- AND IT'S JUST THE STANDARD LAW OF THE LAND. I MEAN, THEY CAN BE CONSIDERED FOR IMPEACHMENT OR AS EVIDENCE PERIOD, AS ...

THE COURT: DO Y'ALL HAVE ANY OBJECTION TO THAT

ONE?

MR. GASSER: WHICH NUMBER?

THE COURT: NUMBER ONE, PRIOR INCONSISTENT STATEMENT.

MR. STRICKLER: MY NUMBER ONE ISN'T NUMBERED NUMBER ONE.

MR. GASSER: OKAY.

MR. STRICKLER: IT'S JUST THE FIRST PAGE. I THINK THAT'S THE LAW. I MEAN, IT CAN BE CONSIDERED AS IMPEACHMENT OR AS TRUTHFUL STATEMENT. AND I'M THINKING OF COURSE IN PARTICULAR OF MANNY---

MR. GASSER: WELL, I MEAN, THERE'S SEVERAL WITNESSES---

MR. STRICKLER: WELL, RIGHT.

MR. GASSER: I AGREE, THAT'S APPROPRIATE.

MR. STRICKLER: REQUEST ON EYEWITNESS IDENTIFICATION IS THE SECOND PAGE WITH A LONG REQUEST AS TO THE FACTORS INVOLVED IN EYEWITNESS IDENTIFICATION.

MR. GASSER: I FIGURED YOU'VE GOT AN IDENTIFICATION CHARGE.

(PAUSE.)

THE COURT: I'VE GOT ONE THAT I'LL CHARGE THAT KIND OF GOES BETWEEN THE TWO OF THESE: AND SOME OF THE FACTORS YOU MAY CONSIDER ARE OPPORTUNITY OF THE WITNESS TO VIEW THE ACCUSED, THE WITNESSE'S DEGREE OF ATTENTION, THE

ACCURACY OF THE PRIOR DESCRIPTION, THE LEVEL OF THE LENGTH OF TIME.

IT'S GOT A PREFACE TO IT. I'LL CHARGE THAT ONE.

MR. STRICKLER: OKAY. SO THE NEXT ONE I HAVE AFTER THE ONES DEALING WITH THE EYEWITNESS WOULD BE THE CHARGE ON REASONABLE DOUBT AND YOU'VE ALREADY DEALT WITH THAT, YOUR HONOR.

THE COURT: UH-HUH. (INDICATES AN AFFIRMATIVE RESPONSE.)

MR. STRICKLER: AND THE NEXT ONE IS INCLUDED IN YOUR DISCUSSION OF REASONABLE DOUBT. I WOULD NOTE, YOUR HONOR, I UNDERSTAND THE RULES AND I WAS IN A HURRY AND I DIDN'T GET YOU A HARD COPY OF THIS. I WOULD REQUEST INCLUSION IN DISCUSSION OF PROOF BEYOND A REASONABLE DOUBT OR AN INCLUSION AT SOME POINT THAT YOU CANNOT CONVICT ON MERE SUSPICION. THAT'S STATE V. SCHROCK. AS PART OF RESOLVING ANY -- ANY DOUBTS---

THE COURT: I THINK THAT'S COVERED IN MY ACCOMPLICE LIABILITY CHARGE.

MR. STRICKLER: OKAY. WELL, I'LL LISTEN FOR THAT. GIVEN THE NATURE OF THE EVIDENCE IN THIS CASE I THINK IT'S AN APPROPRIATE CHARGE IN THIS MATTER.

MR. GASSER: MERE SUSPICION IS A -- IS A VIABLE CHARGE. I DON'T SEE HOW ANY PROSECUTOR COULD ARGUE AGAINST THAT. THEY CAN CONVICT ON MERE SUSPICION.

MR. STRICKLER: THE NEXT, YOUR HONOR, I HAVE A REQUEST REGARDING THE GOOD CHARACTER OF THE DEFENDANT BECAUSE I DID PUT HIS CHARACTER INTO EVIDENCE IN MY EXAMINATION OF HIM.

MR. GASSER: I WOULD OBJECT TO THAT. I DON'T -- I THINK SOME OF THE QUESTIONS HE ASKED TOUCHED ON IT BUT I DON'T THINK THAT THERE WAS A FULL BLOWN CHARACTER...

THE COURT: I DON'T THINK THAT'S APPLICABLE IN THIS CASE.

MR. STRICKLER: ALL RIGHT, SIR.

MR. GASSER: AND OF COURSE I WOULD HAVE GONE INTO WHAT YOU DIDN'T ALLOW ME TO GET INTO ABOUT SOME OF THE TESTIMONY.

THE COURT: NOW FLIGHT OF THE DEFENDANT, THAT'S FROM A FEDERAL CASE?

MR. STRICKLER: YES, SIR. THAT'S---

THE COURT: THEY GET TO CHARGE FACTS IN FEDERAL COURT, WE DON'T GET TO DO THAT.

MR. STRICKLER: BEG THE COURT'S INDULGENCE---

THE COURT: AND IF I WERE TO TELL A JURY THAT INNOCENT PERSONS ARE SOMETIMES HESITANT TO SUBMIT TO ARREST AND THEY TRY TO FLEE, THAT'S A CHARGE ON THE FACTS.

MR. STRICKLER: ALL RIGHT, SIR. THANK YOU.

THEN NEXT IS DIRECT AND CIRCUMSTANTIAL AND YOU'VE ALREADY EXPRESSED YOURSELF ON THAT AND I UNDERSTAND. JUST

ASK THE RECORD TO NOTE THAT MY REQUEST IS CONTRA TO WHAT YOU -- IS THE OLD LAW IN THAT REGARD.

MR. GASSER: DID WE SKIP OVER FLIGHT OF THE DEFENDANT?

MR. STRICKLER: HE'S ALREADY SAID HE'S NOT GONNA CHARGE THAT.

THE COURT: SEE THE FEDERAL COURT -- THE FEDERAL COURTS HAVE MUCH BROADER AUTHORITY IN CHARGING A JURY THAN STATE COURTS.

MR. STRICKLER: YES, SIR.

MY NEXT IS A REQUEST REGARDING AIDING AND ABETTING. AND I SEE MR. GASSER'S REQUEST. JOHNNY, DID YOU GET HIM A COPY OF THESE ALREADY?

MR. GASSER: YEAH, HE'S GOT THE SAME ONE I'VE GIVEN HIM IN ALL THE OTHER CASES.

MR. STRICKLER: HIS REQUEST NUMBER THREE DEALS WITH AIDING AND ABETTING.

MR. GASSER: OH, I'M SORRY, THE AIDING AND ABETTING. I GOT THAT RIGHT OUT OF BLACK'S LAW DICTIONARY. I DON'T KNOW WHAT YOU WERE GOING TO CHARGE. I...

THE COURT: I'VE GOT IT RIGHT HERE.

(PAUSE.)

THE COURT: I WOULD CHARGE THAT A PERSON WHO WAS PRESENT AT THE SCENE OF THE CRIME INTEN -- OF THE CRIME AND INTENTIONALLY OR THROUGH A COMMON PLAN AIDED OR

ABETTED OR ASSISTED IN THE COMMISSION OF THAT CRIME THROUGH SOME OVERT ACT, IS GUILTY AS AN ACCOMPLICE. TO BE LIABLE AS AN ACCOMPLICE, A DEFENDANT MUST HAVE KNOWLEDGE OF THE PRINCIPAL'S CRIMINAL CONDUCT. MERE PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO ESTABLISH GUILT AS AN ACCOMPLICE. INTENTIONALLY MEANS WILLFULLY INTENDING THE RESULT WHICH ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.

MR. GASSER: I THINK THAT LANGUAGE IS BETTER THAN MINE FOR THREE. I'LL WITHDRAW THREE.

MR. STRICKLER: AND, YOUR HONOR---

MR. GASSER: I THINK IT ENCOMPASSES YOUR MERE PRESENCE AS WELL. SO...

MR. STRICKLER: THAT ENCOMPASSES -- ENCOMPASSES MY MERE PRESENCE AND ACTUALLY THE NEXT I HAVE IS MERE KNOWLEDGE AND I THINK -- I THINK YOU ADDRESS MERE KNOWLEDGE.

THE COURT: YEAH, MUST HAVE KNOWLEDGE OF THE CRIMINAL CONDUCT.

MR. STRICKLER: AND I THINK THAT'S IT FOR ME. THE ONLY THING NOT REFLECTED IN THE WRITTEN CHARGE REQUESTS I SUBMITTED TO YOU IS MY REQUEST ON MERE SUSPICION. I'M LOOKING AT MR. GASSER'S -- HAS ALREADY DEALT WITH THREE. I JUST -- I HAVE NO OBJECTION TO TWO. ONE IS CLEARLY THE LAW OF THE LAND.

DOESN'T FOUR JUST CHARGE ACCOMPLICE LIABILITY IN DIFFERENT LANGUAGE?

MR. GASSER: I TOOK THAT STRAIGHT FROM THE CASE---

MR. STRICKLER: I---

THE COURT: I'LL SEE HOW THAT SUPPLEMENTS MY CHARGE TO MAKE SURE I DON'T OVERLAP OR ANYTHING.

MR. STRICKLER: ALL RIGHT, SIR.

MR. GASSER: AND FIVE IS JUST THE STATUTE ITSELF. THAT'S VERBATIM THE STATUTE.

MR. STRICKLER: IF YOU CHARGE A PERMISSIBLE INFERENCE, THEN WE NEED TO GET A CHARGE SUCH AS THAT EMPLOYED IN THE STATE V. ELMORE RELATING TO PERMISSIBLE INFERENCES FROM THE USE OF A DEADLY WEAPON. THAT MAY BE COVERED IN YOUR CHARGES -- IN -- A DEFINITION OF WHAT A PERMISSIBLE INFERENCE IS.

THE COURT: WELL THE STATUTE---

MR. STRICKLER: IT'S MERELY AN EVIDENTIARY FACT---

THE COURT: WHICH CAN BE TAKEN TOGETHER WITH ALL THE OTHER---

MR. STRICKLER: THE JURY CAN ACCEPT IT OR REJECT IT.

THE COURT: ACTUALLY THE OLD STATUTE SAYS PRESUMED.

MR. TAYLOR: YOUR HONOR, I WOULD ALSO ASK---

THE COURT: REMEMBER THE OLD PRESUMED?

MR. TAYLOR: IF I COULD GET THIS ON THE RECORD WITH

REGARD TO THAT THAT THE COURT ALSO CHARGE THE JURY THAT AN INFERENCE STANDING ALONE CAN NEVER SUBSTANTIATE OR BE THE BASIS FOR A CONVICTION. THAT'S THE SANDSTRUM CASE -- MONTANA-SANDSTRUM.

(PAUSE.)

THE COURT: HOW ABOUT: BUT THIS IS ONLY AN INFERENCE WHICH SHOULD BE CONSIDERED WITH ALL THE OTHER EVIDENCE IN THE CASE?

MR. TAYLOR: WELL, I THINK, YOU HONOR, WE STILL NEED TO MAKE IT CLEAR TO THE JURY THAT AN INFERENCE STANDING ALONE CAN NEVER BE THE BASIS FOR A CONVICTION.

THE COURT: IS THAT THE LAW?

MR. TAYLOR: YES, SIR. THAT'S -- THAT'S SANDSTRUM VERSUS MONTANA.

MR. GASSER: I THOUGHT SANDSTRUM VERSUS MONTANA IS WHAT CHANGES FROM PRESUMPTIVE TO INFERENCE.

MR. TAYLOR: AND IT SAYS THAT AN INFERENCE STANDING ALONE CAN NEVER BE THE BASIS OF A CONVICTION.

MR. GASSER: IT MIGHT---

MR. TAYLOR: I GET IT CHARGED ALL THE TIME. I JUST ...

THE COURT: WELL I'LL JUST SEE RIGHT HERE IN MY LITTLE MAGIC BOOK.

(PAUSE.)

MR. STRICKLER: YOUR HONOR, AS FAR AS WHAT YOU --

I'M SORRY. AS FAR AS WHAT YOU PROPOSED AS FAR AS PERMISSBLE INFERENCE, THAT DEFINITION, I'D SUBMIT -- TO BE ON THE SAFE SIDE, THAT YOU NEED TO TAKE THE LANGUAGE STRAIGHT OUT OF ELMORE THAT DEALS -- THAT DEALS WITH PERMISSIBLE INFERENCES FROM USE OF A DEADLY WEAPON. BECAUSE IT'S VERY SPECIFIC LANGUAGE THAT THEY USE IN THERE AND IT DOES GO -- EVIDENCE IN THE CASE WHICH GOES BEYOND THAT.

THE COURT: HAS ANYBODY GOT A COPY OF THAT CASE?

MR. STRICKLER: I'VE GOT ONE. JUST ONE MOMENT.

(PAUSE.)

THE COURT: IS THIS WHAT THE LANGUAGE IS? IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THE INFERENCE WILL SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION ALONG WITH ALL THE EVIDENCE IN THE CASE.

MR. STRICKLER: YES, SIR. YES, SIR.

THE COURT: THAT'S IN MY MURDER CHARGE. OKAY.

MR. STRICKLER: THAT'S WHAT I THOUGHT. I THOUGHT IT WAS THERE BECAUSE YOU---

THE COURT: I THOUGHT I REMEMBERED IT VERBATIM.

MR. STRICKLER: AND YOU MAY HAVE. MAYBE I JUST MIS -- JUST---

THE COURT: BUT THIS IS ONLY AN INFERENCE WHICH SHOULD BE CONSIDERED WITH ALL THE OTHER -- SIMPLY -- OKAY,

I SEE IT. I'LL WRITE IT. I'LL WRITE THE WHOLE THING.

MR. STRICKLER: SIMPLY AN EVIDENTIARY FACT WHICH MAY BE TAKEN -- IF YOU HAVE THE PERMISSIVE INFERENCE IN DEALING WITH MALICE, THAT WILL BE THE CHARGE THAT I ASK YOU FOR IN THAT REGARD.

THE COURT: OKAY. I DON'T BELIEVE THAT FEDERAL CASE SAYS THAT THEY CAN FIND SOMEBODY GUILTY ON A FACT, IT WAS PROVEN BEYOND A REASONABLE DOUBT; RIGHT?

MR. TAYLOR: ON A FACT THAT WAS PROVEN, RIGHT, NOT AN INFERENCE BUT A FACT.

THE COURT: WELL, IF YOU CAN PROVE IT ON A FACT WHY CAN'T YOU PROVE IT ON AN INFERENCE -- INFERENCE DRAWN FROM A FACT IF IT WAS PROVEN BEYOND A REASONABLE DOUBT, ESOTERICALLY.

MR. TAYLOR: WELL, YOU -- YOU JUST CAN'T DO IT. WELL, WHEN YOU USE -- SEE THE PROBLEM IS THAT A LAY PERSON THEY -- IT'S DIFFICULT FOR THEM TO DISTINGUISH BETWEEN A PRESUMPTION AND AN INFERENCE. AND THAT'S WHY YOU NEED TO TAKE THE NEXT STEP AND SAY, AN INFERENCE ALONE CAN NEVER SUBSTANTIATE A FINDING OF GUILT.

THE COURT: I DON'T THINK THAT'S THE LAW.

MR. TAYLOR: WELL, AN INFERENCE IS NOT MORE THAN JUST A SUSPICION OR AN INSINUATION. THAT'S THE TRUTH, ISN'T IT?

THE COURT: WELL, THE LAW IN THIS STATE SAYS, IF

FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL THE EVIDENCE IN THE CASE AND YOU SHOULD GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

MR. TAYLOR: I UNDERSTAND YOUR RULING.

THE COURT: I DON'T -- IF THEY DRAW AN INFERENCE OF SOMETHING, THEY CAN FIND GUILT ON THAT, LOGICALLY.

MR. STRICKLER: IF THEY FIND AN INFERENCE THROUGH THE PROCESS SET FORTH---

THE COURT: YEAH.

MR. STRICKLER: THE ONLY THING IS THAT -- THAT LANGUAGE RELATES TO AN INFERENCE AS FAR AS FROM THE USE A DEADLY WEAPON. AND WE ALSO -- NEED TO ALSO DEFINE THAT -- JUST WHAT WE WERE TALKING ABOUT AS FAR AS THE INFERENCE MR. GASSER -- AND THE STATUTE SAYS THEY CAN DRAW FROM PRESENCE IN A MOB.

THE COURT: OKAY.

(PAUSE.)

THE COURT: OKAY.

MR. TAYLOR: ALL RIGHT. WE READY FOR MINE NOW?

THE COURT: YEAH, YOU GOT THE SAME ONES AS MR.---

MR. TAYLOR: WELL, NOT -- NOT -- NOT ENTIRELY, YOUR HONOR. SOME OF THEM ARE.

NUMBER ONE, THAT GENERAL CHARGE, I PRESUME YOU GONNA CHARGE THAT?

THE COURT: YEAH, THAT'S IN MY GENERAL CHARGE.

MR. TAYLOR: YOU'VE ADDRESSED MY NUMBER TWO BURDEN OF PROOF. NUMBER THREE, I THINK YOU'VE ADDRESSED, RESOLUTION OF THE DOUBT. YOU'VE INDICATED YOU WILL NOT CHARGE STATE VERSUS MANNING. CIRCUMSTANTIAL EVIDENCE, THAT'S GRIPPON WITH NEEDS. KIMBRELL, STATE VERSUS CHERRY WHICH IT WAS DECIDED NOT TOO LONG AGO. YOU KNOW, WE HAD FOUR OR FIVE OPINIONS. YOU HAD TO TAKE ABOUT SIX ASPIRIN BEFORE YOU READ IT AND TRIED TO FIGURE OUT WHAT THEY WERE SAYING BUT IT DIDN'T REALLY CHANGE THIS WHEN YOU HIT THE BOTTOM LINE.

THE COURT: WHO WROTE THAT, THE COURT OF APPEALS, JUDGE ANDERSON?

MR. TAYLOR: FIVE -- FIVE JUSTICES WROTE FIVE DIFFERENT OPINIONS, I BELIEVE, IN THAT CASE. BUT I THINK THE BOTTOM LINE IS THAT THEY ALL ARE STILL IN ACCORD WITH GRIPPON AND STATE VERSUS NEEDS WHICH IS MY NUMBER FIVE.

THE COURT: OH, YEAH, I REMEMBER THAT CASE NOW.

MR. TAYLOR: AND THEN MERE PRESENCE OR ASSOCIATION, I THINK YOU SAID YOU ARE GONNA CHARGE THAT, NUMBER SEVEN.

THE COURT: YEAH, THE MERE PRESENCE AND THE MERE KNOWLEDGE, THAT'S KIND OF INCLUDED IN MY THING BUT I MIGHT ADD A FEW WORDS.

MR. TAYLOR: AND NUMBER EIGHT IS THE MERE KNOWLEDGE.

THE COURT: YEAH.

MR. TAYLOR: MY SEVEN IS PRESENCE, EIGHT IS KNOWLEDGE. NINE IS MERE PRESENCE, A GENERAL CHARGE.

(PAUSE.)

MR. TAYLOR: LET'S SKIP FOR JUST A MOMENT TO NUMBER ELEVEN. I BELIEVE YOU SAID YOU'RE CHARGING NUMBER TEN.

THE COURT: YEAH, THAT'S---

MR. TAYLOR: NUMBER ELEVEN---

THE COURT: I'VE GOT MY OWN---

MR. TAYLOR: I THINK YOU'VE GOT NUMBER ELEVEN, I BELIEVE YOU SAID.

THE COURT: MY OWN LITTLE EYEWITNESS.

MR. TAYLOR: AND EYEWITNESS RELIABILITY NUMBER TWELVE, I THINK YOU SAID YOU WILL CHARGE? YOU SAID YOU WILL NOT CHARGE OUR NUMBER THIRTEEN. I'D ASK THAT BE MARKED FOR IDENTIFICATION PURPOSES. AND THEN WE HAVE REQUEST TO CHARGE NUMBER FOURTEEN.

THE COURT: I DON'T THINK THAT'S A PROPER CHARGE ABOUT CHARACTERIZING POLICE OFFICERS' TESTIMONY. I THINK THERE'S A CASE RIGHT ON POINT, ISN'T THERE?

MR. GASSER: SEVERAL CASES ON POINT.

THE COURT: YEAH.

MR. TAYLOR: IF YOU WOULD MARK THAT FOR THE RECORD,

PLEASE.

THE COURT: ALL RIGHT. WE'LL GIVE THOSE TO THE COURT REPORTER.

MR. TAYLOR: AND THEN, YOUR HONOR, I WOULD ASK, OF COURSE, IF YOU'D CHARGE THE JURY THAT THE FAILURE OF THE DEFENDANT TO TESTIFY CAN IN NO WAY BE USED AGAINST HIM.

THE COURT: ABSOLUTELY.

MR. TAYLOR: YOU HAVE A -- I THINK YOU HAVE A VERY GOOD CHARGE ON THAT ALREADY.

THE COURT: YEP.

MR. TAYLOR: AND THAT THEY'RE NOT EVEN TO DISCUSS THAT FACT IN THE JURY ROOM.

THE COURT: IT'S PRETTY THOROUGH.

MR. STRICKLER: THE ONLY OTHER THING I NEED TO NOTE FOR THE RECORD, YOUR HONOR, I SUPPLIED YOU WITH A COPY OF MY REQUEST TO CHARGE. I'VE GIVEN A COPY TO MR. CLERK AND ASKED THAT HE MAKES IT A PART OF THE FILE HERE AND I'VE SUPPLIED A COPY TO MADAM COURT REPORTER AND ASKED THAT SHE MARK IT AS THE COURT'S EXHIBIT TO PRESERVE IT IN CASE IT NEEDS TO BE REFERENCED LATER.

THE COURT: ALL RIGHT.

MR. STRICKLER: SHE'S ALREADY DONE THAT, SIR.

THE COURT: ALL RIGHT. YOU MIGHT WANT TO DO THAT TOO, MR. TAYLOR.

MR. TAYLOR: YES, SIR, THAT WOULD BE A GOOD IDEA.

DO I NEED AN ADDITIONAL COPY OR CAN THE COURT JUST PROVIDE COPIES TO THE COURT REPORTER---

THE COURT: I'LL GIVE HER---

MR. TAYLOR: --- AND JUST MARK THEM IN?

THE COURT: I'LL GIVE HER MINE.

MR. TAYLOR: ALL RIGHT, SIR, THANK YOU.

(COURT'S EXHIBIT NUMBER THREE, STATE'S REQUEST TO CHARGE #1, IS NOW MARKED FOR IDENTIFICATION.)

THE COURT: ALL RIGHT. YOU WANT A FEW MINUTES TO GET READY?

MR. GASSER: YOUR HONOR, A COUPLE OF THINGS. I'M ASSUMING THERE'S GOING TO BE -- MR. HOOD'S GONNA BRIEFLY OPEN ON THE LAW. AND THEN THE TWO DEFENSE LAWYERS WILL GO AND WILL BE HANDLING DIFFERENT EVIDENCE. I'M ASSUMING AFTER THE SECOND DEFENSE LAWYER, WOULD THAT BE A GOOD TIME FOR THE JURY TO BREAK?

THE COURT: HOW LONG DO Y'ALL THINK Y'ALL GONNA TAKE TO ARGUE?

MR. HOOD: FIFTEEN MINUTES---

MR. TAYLOR: WELL, HOW'S THE ORDER OF THIS THING GOING? NOW, WE---

MR. STRICKLER: THE ORDER WE'VE BEEN IN ALL DAY -- ALL WEEK.

THE COURT: HE GOES FIRST AND LAST.

MR. TAYLOR: BUT THEY'RE GONNA OPEN ON THE LAW? I

HEAR THAT. THEY'RE GONNA OPEN ON THE LAW.

MR. STRICKLER: THEN I---

MR. TAYLOR: OKAY.

MR. STRICKLER: HAVE THE PRIVILEGE OF GOING BEFORE EVERYONE ELSE IN THE CLOSINGS.

MR. TAYLOR: ALL RIGHT. AND THEN I THINK -- THEN I MAKE MY ARGUMENT AND THEN -- AND THEN ONLY ONE REPLY FROM THE STATE.

MR. GASSER: THAT'S CORRECT.

MR. TAYLOR: THEY DON'T -- THEY DON'T -- OKAY. I WAS THINKING HE WAS SAYING HE GETS TO REPLY TO MR. STRICKLER AND THEN TO ME SEPARATELY.

MR. GASSER: OH, NO.

MR. TAYLOR: OKAY. VERY GOOD. THANK YOU.

MR. GASSER: BUT I DO HAVE TO REPLY TO TWO LAWYERS.

MR. TAYLOR: THAT'S NOT WORK.

THE COURT: ANYBODY HAVE ANY IDEA HOW LONG THEY'RE GONNA TAKE TO ARGUE SO I'LL KNOW HOW MANY ADVANCE SHEETS TO BRING IN HERE?

MR. STRICKLER: I HAVE TO SAY A HALF AN HOUR, IT MIGHT BE LONGER THAN THAT.

THE COURT: WHATEVER. IT'S A SERIOUS CASE. LET'S TAKE ABOUT TEN MINUTES. TEN MINUTES BE ENOUGH TO GET READY, YOU RECKON? YOU WANT MORE?

MR. STRICKLER: FIFTEEN?

MR. TAYLOR: ABOUT FIFTEEN, PLEASE.

THE COURT: ALL RIGHT.

MR. STRICKLER: DOES THAT SUIT YOU, JOHNNY?

MR. GASSER: YEAH.

THE COURT: NOW ON THE LYNCHING STATUTE, I'M CHARGING THOSE TWO STATUTES WHICH IS WHAT FIRST DEGREE LYNCHING IS, WHAT THE MOB IS AND THEN THAT THING OUT OF BARKSDALE WHICH SAYS, THE ASSEMBLAGE NEED NOT HAVE FORMED WITH THE PREMEDITATED PURPOSE AND INTENT OF COMMITTING AN ACT OF VIOLENCE ON THE PERSON OF ANOTHER, BUT MAY FORM THE REQUISITE PURPOSE AND INTENT AFTER THE PARTICIPANTS ARE ASSEMBLED.

MR. GASSER: YOUR HONOR, A COUPLE OF THINGS. I KNOW THAT OBVIOUSLY THEY HAVE TO PROTECT THE RECORD AND THEIR CLIENTS AND I WOULD STIPULATE THAT ANY OBJECTIONS THEY HAVE, I BROUGHT SOME CASES IN AND -- AS THIS COURT KNOWS AND MR. STRICKLER KNOWS, I DON'T LIKE OBJECTING DURING -- UNLESS I ABSOLUTELY HAVE TO. I KNOW THAT DEFENSE LAWYERS MAKE -- I UNDERSTAND AT TIMES WE ALL HAVE TO OBJECT.

I JUST WANT TO MAKE SURE THERE'S CERTAIN CLARITIES. UNDER STATE VERSUS RAFFALDT, W -- OR R-A-F-F-A-L-D-T, ARGUING TO THE JURY THAT THEY WOULD HAVE TO -- THE STATE, THE PROSECUTOR ARGUING TO THE JURY THAT THEY WOULD HAVE TO DISBELIEVE THE STATE'S WITNESSES VERSUS THE DEFENSE

WITNESSES, PITTING DURING CLOSING ARGUMENTS IS CLEARLY PERMISSIBLE.

THAT'S WHAT ARGUMENT IS. I JUST WANT TO MAKE SURE WE'RE CLEAR ON THAT. THAT'S OBVIOUSLY WHAT I'M GONNA DO, STATE'S WITNESSES VERSUS DEFENSE WITNESSES. I WANT TO MAKE SURE EVERYONE UNDERSTANDS THAT.

WOULD THE COURT -- OKAY. I JUST WANTED TO MAKE---

THE COURT: YOU'RE RIGHT.

MR. GASSER: STATE VERSUS LUNSFORD, THE STATE ARGUING NOT TO FALL FOR DEFENSE ATTORNEY'S TACTICS IS OKAY AN PERMISSIBLE. AND IT DEPENDS ON WHAT THEY SAY, BUT I CAN'T BE -- YOU CAN'T BE PERSONABLE TO THE LAWYER THEMSELVES BUT THE TACTIC ITSELF, THE STATE VERSUS LUNSFORD, SAID THE PROSECUTOR SAYING, "DON'T FALL FOR THE DEFENSE ATTORNEY'S TACTICS" IS OKAY AND PERMISSIBLE.

STATE VERSUS McDANIEL, ALTHOUGH I'M NOT GOING TO -- ALTHOUGH I'M NOT GOING TO DO THE MUDDY THE WATER STORY, THAT'S THE RICHLAND COUNTY CASE WHERE IT WAS UPHELD SOME PROSECUTORS IN THIS CIRCUIT, USED A DEFENSE LAWYER TRYING TO MUDDY THE WATERS. I'M NOT GONNA USE THAT LANGUAGE. I'VE NEVER USED THAT LANGUAGE, ALTHOUGH IT'S PERMISSIBLE. WHAT IT DOES SAY IS YOU CAN POINT OUT MATTERS WHICH THE JURY SHOULD CONSIDER AND SHOULD NOT CONSIDER.

BOTH DEFENDANTS HAVE INTRODUCED EVIDENCE. AND I DON'T KNOW WHAT KIND OF ATTACK WE'RE GONNA HAVE ON THE

STATE. BUT SINCE BOTH OF THEM HAVE INTRODUCED EVIDENCE, UNDER STATE VERSUS SHACKELFORD, STATE VERSUS POSEY, STATE VERSUS COOK, STATE VERSUS CHARPING, AND STATE VERSUS DOUGLAS, THE PROSECUTION, DEPENDING ON HOW -- WHAT THE DEFENSE ARGUES IN CLOSE, THE PROSECUTION IS ALLOWED TO COMMENT ON THE DEFENDANT NOT CALLING CERTAIN WITNESSES AS LONG AS IT DOESN'T DEAL WITH THE ELEMENTS OF THE CRIME OF LYNCHING AND THE ELEMENTS OF THE CRIME OF MURDER.

AND LET ME GIVE YOU AN EXAMPLE, I DON'T WANT TO USE THE ONE I THINK THEY'RE GONNA USE, BUT IF THEY ARGUE A POINT IN THEIR CLOSE AND I AM LIABLE TO ARGUE THAT YOU CAN'T BELIEVE THIS ONE PARTICULAR -- OR WHEN YOU'RE LOOKING TO BELIEVE WHAT THIS ONE DEFENSE WITNESS SAID, WHAT YOU DON'T HAVE IS THIS EVIDENCE TO CORROBORATE THAT WITNESS. AND I'M GONNA MAKE AN ARGUMENT ON THAT WITH ONE OF THEIR WITNESSES. IT HAS NOTHING TO DO WITH THE ELEMENTS OF MURDER AND ELEMENTS OF LYNCHING. AND ALL THOSE CASES I JUST SAID CLEARLY INDICATE THE SOLICITOR'S ALLOWED TO COMMENT ON THE DEFENDANT'S REFUSAL TO CALL WITNESSES OR OFFER EVIDENCE, AS LONG AS IT'S NOT BURDEN SHIFTING.

AND I WANTED TO -- AND CLEARLY, IF I'M A DEFENSE LAWYER AND I HEAR THAT, THE FIRST THING I'M GONNA DO IS JUMP AND OBJECT. BUT I WANTED TO PUT THAT ON THE RECORD NOW TO TRY AND RESOLVE IT. I WOULD STIPULATE THAT ANY --

AND I WANT THE RECORD TO BE CLEAR, THAT ANY OBJECTIONS THAT BOTH DEFENSE COUNSEL WOULD HAVE DURING CLOSING, IF THEY MAKE THEM TO THIS COURT AFTER CLOSING ARGUMENT, I WOULD STIPULATE, FOR THE RECORD, THAT THE STATE CONSIDERS THOSE OBJECTIONS AT THE SAME TIME AS THE COMMENTS MADE DURING CLOSING.

THE COURT: IS EVERYBODY CLEAR ON THAT?

MR. TAYLOR: WELL, YOUR HONOR, NO, NO. I'M SORRY. IF HE'S STANDING UP HERE AND MAKING IMPROPER ARGUMENT TO THE JURY, I'M GOING TO HAVE TO OBJECT AT THAT TIME AND PUT A STOP TO IT AT THAT TIME OBVIOUSLY. WE CAN'T JUST LET HIM GO ON WITH IT AND THEN ASK YOU TO CONSIDER IT AND THEN BRING THE JURY BACK OUT AND GIVE THEM A CURATIVE INSTRUCTION TO DISREGARD WHAT HE SAID.

MR. GASSER: I UNDERSTAND. AND IF HE THINKS I'M IMPROPER. I'M JUST LAYING THE GROUNDWORK FOR WHAT'S NOT IMPROPER. I MEAN THERE'S SOME -- THERE'S ONE OF THEIR WITNESS THEY CALLED -- I'M NOT GOING TO REVEAL MY STRATEGY. ONE OF THE WITNESSES THEY CALLED SAID THAT -- SAID SOMETHING TO THE JURY AND THEY CLEARLY COULD HAVE GOTTEN SOME DOCUMENTS TO CORROBORATE HIS OPPORTUNITY FOR THAT AND THEY DIDN'T DO IT.

AND WE DON'T HAVE -- IT'S NOT THE STATE -- IT'S NOT BURDEN SHIFTING. WE DON'T HAVE THE BURDEN OF PROVING THE CREDIBILITY OF THEIR WITNESSES. WE HAVE THE BURDEN OF

PROVING THE ELEMENTS OF THE CRIME.

SO I WANT TO MAKE SURE THEY DON'T JUMP UP ON BURDEN SHIFTING WHEN I'M ARGUING TO THEM THAT THEY COULD HAVE -- THAT WHAT THEY DON'T HAVE IS ANY CORROBORATION, ANY RECORD TO CORROBORATE THAT THIS AND THIS HAPPENED LIKE THEIR WITNESS SAID IT HAPPENED.

THE COURT: I'VE GOT YOU BUT YOU CAN MAKE CONTEMPORANEOUS OBJECTIONS.

MR. TAYLOR: YEAH AND I WOULD WANT TO.

THE COURT: AND YOU SHOULD.

ANYTHING ELSE?

MR. GASSER: NOTHING FROM THE STATE.

MR. STRICKLER: I'VE GOT NOTHING TO SAY AND I'M SAYING IT.

THE COURT: ALL RIGHT. LET'S TAKE ABOUT FIFTEEN MINUTES AND WE'LL COME BACK.

(COURT IS IN RECESS.)

(JURY IN AT 10:35 A.M.)

THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT, LADIES AND GENTLEMEN, WE'RE GONNA HAVE OUR CLOSING ARGUMENTS NOW AND THIS IS HOW IT'S GONNA WORK.

MR. HOOD FROM THE SOLICITOR'S OFFICE IS GONNA OPEN UP WITH A BRIEF CLOSING AND THEN MR. STRICKLER'S GONNA MAKE HIS CLOSING ARGUMENT. THEN MR. TAYLOR WILL MAKE HIS

CLOSING ARGUMENT. THEN MR. GASSER WILL FINISH UP WITH HIS CLOSING ARGUMENT.

AND THEN I WILL TELL YOU WHAT THE LAW IS AS IT APPLIES TO THE FACTUAL ISSUES IN THIS CASE AND I WILL GIVE YOU THOSE INDICTMENTS WHICH HAVE A PLACE FOR WRITING THE VERDICT ON EACH ONE OF THE. AND THEN WE'LL SEND YOU TO YOUR JURY ROOM AND LET YOU DELIBERATE THIS CASE. OKAY?

AND WHAT WE'LL DO IS -- THESE CLOSING ARGUMENTS MIGHT TAKE A LITTLE BIT OF TIME SO MAYBE AT ONE POINT IN TIME WE'LL STOP AND TAKE A BREAK AND THEN COME BACK AND FINISH IT UP. OKAY?

ALL RIGHT, MR. HOOD.

MR. TAYLOR: YOUR HONOR, BEFORE WE DO THAT. WE HAVE A STIPULATION.

THE COURT: OKAY.

MR. TAYLOR: WITH RESPECT TO THE TWO PHOTOGRAPHS INTRODUCED BY DEFENDANT DUSHUN STATEN, EIGHT AND NINE, IT IS NOT CONTENDED BY THE DEFENDANT THAT THESE PHOTOGRAPHS WERE TAKEN ON THE DATE OF THIS INCIDENT. THESE ARE FOR OTHER PURPOSES.

THE COURT: OKAY.

MR. GASSER: IN OTHER WORDS, THEY WEREN'T TAKEN ON -- TAKEN ON JANUARY 15TH, 2000 -- 2001?

MR. TAYLOR: THAT IS CORRECT.

THE COURT: ALL RIGHT.

ALL RIGHT, MR. HOOD.

MR. HOOD: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

CLOSING ARGUMENT ON BEHALF OF THE STATE BY MR. HOOD:

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, GOOD MORNING. MY NAME IS ROBERT HOOD AND WAY BACK ON MONDAY I WAS INTRODUCED TO YOU. THIS IS MY FIRST OPPORTUNITY TO ACTUALLY COME BEFORE YOU AND TALK TO YOU AS A JURY.

LET ME START OFF BY SAYING THANK YOU. THANK YOU FOR THE TREMENDOUS AMOUNT OF ATTENTION YOU'VE PAID TO THIS TRIAL THIS WEEK. IT'S BEEN A LONG WEEK. YOU'VE WORKED LONG HOURS AND THERE'S BEEN NUMEROUS WITNESSES. AND THROUGHOUT THE ENTIRE TRIAL, EACH AND EVERY ONE OF YOU HAS PAID CLOSE ATTENTION TO EVERYTHING THAT'S GONE ON.

LET ME NEXT APOLOGIZE TO YOU. IF FOR SOME REASON I OR MR. GASSER HAS DONE SOMETHING THAT HAS OFFENDED YOU DURING THE TRIAL, WE APOLOGIZE. A TRIAL OF THIS NATURE WITH THESE CHARGES TENDS TO BECOME VERY HEATED. AND AT TIMES PEOPLE CAN BECOME EMOTIONAL.

BUT THE FACT OF THE MATTER IS, LADIES AND GENTLEMEN, EVERY SINGLE PERSON IN THIS COURTROOM HAS A JOB TO DO. IT'S THE STATE'S JOB TO BE THE ADMINISTERS OF JUSTICE. IT'S THE DEFENSE ATTORNEY'S JOB TO ZEALOUSLY REPRESENT THEIR CLIENT. IT'S HIS HONOR'S JOB TO ADMINISTER THE LAW. AND IT'S YOUR JOB, AS THE JURY, TO RENDER A VERDICT. AND

THE ONLY BURDEN THAT THE LAW PUTS ON YOU IS THAT THAT VERDICT SPEAK THE TRUTH.

BACK ON TUESDAY MORNING, YOU STOOD BEFORE THIS COURT, RAISED YOUR RIGHT HAND AND SWORE AN OATH THAT YOU WOULD UPHOLD THE LAW OF SOUTH CAROLINA AND THAT YOU WOULD SET ASIDE ANY BIAS OR PREJUDICE THAT YOU HAD TO EITHER THE DEFENSE OR THE STATE. AND THAT YOU WOULD BASE YOUR VERDICT ON THE EVIDENCE AND THE LAW, NOT ON ANY FICTION OR ASSERTIONS.

NOW WE ALL KNOW THAT LUCIUS STATEN AND DUSHUN STATEN ARE EACH CHARGED WITH MURDER AND LYNCHING IN THE FIRST DEGREE. FOR ABOUT THE NEXT TEN MINUTES WHAT I'M GOING TO DO IS TELL -- IS EXPLAIN THE LAW. AFTER THAT MR. STRICKLER WILL HAVE AN OPPORTUNITY TO COME UP AND GIVE A CLOSING ARGUMENT, MR. TAYLOR AND THEN MR. GASSER WILL END. AND THEN HIS HONOR WILL INSTRUCT YOU ON THE LAW IN SOUTH CAROLINA.

THE FIRST, WHAT IS MURDER? LADIES AND GENTLEMEN, WHILE MURDER IS THE MOST HEINOUS CRIME IN OUR SOCIETY, IT HAS THE SIMPLEST DEFINITION.

MURDER IS DEFINED AS THE KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. AND LET'S STOP RIGHT THERE.

THE UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR APPLIED. WHAT IS MALICE?

MALICE, LADIES AND GENTLEMEN, IS A DARK AND EVIL HEART, A HEART FATALLY BENT ON MISCHIEF. MALICE STEMS FROM WICKEDNESS.

WHAT IS AN AFORETHOUGHT? SIMPLY THE OPPOSITE OF AN AFTERTHOUGHT. THE MALICE DOESN'T HAVE TO COME A WEEK BEFORE OR A MONTH BEFORE. IT CAN COME THE MOMENT BEFORE THE TRIGGER IS PULLED. MALICE CAN BE EXPRESSED OR IMPLIED.

AN EXAMPLE OF EXPRESSED MALICE IS, I'M GONNA KILL YOU. THE LAW, AS HIS HONOR WILL INSTRUCT YOU, SAYS THAT YOU CAN IMPLY MALICE IN CERTAIN SITUATIONS. ONE OF THOSE SITUATIONS WHERE MALICE CAN BE IMPLIED IS THE USE OF A DEADLY WEAPON.

NOW IT HAS BEEN THE STATE'S CONTENTION THROUGHOUT THIS ENTIRE CASE, FROM DAY NUMBER ONE THROUGH THE END OF TODAY, THAT NEITHER LUCIUS STATEN NOR DUSHUN STATEN WERE THE TRIGGER MEN.

AND WHY IS THAT IMPORTANT? BECAUSE LUCIUS STATEN AND DUSHUN STATEN ARE CHARGED AS AIDERS AND ABETTORS UNDER A THEORY THE LAW CALLS ACCOMPLICE LIABILITY.

IN THE CONTEXT OF ACCOMPLICE LIABILITY FOR MURDER, THE ELEMENT OF MALICE, WHICH WE JUST SPOKE ABOUT, WHICH MUST BE PROVED BY THE STATE, IS THAT OF THE KILLER.

WHAT DOES THAT MEAN? THAT MEANS WE DO NOT HAVE TO PROVE TO YOU THAT LUCIUS STATEN AND DUSHUN STATEN HAD

MURDER IN THEIR HEARTS -- EXCUSE ME, MALICE IN THEIR HEARTS. WE HAVE TO PROVE THAT THE PERSON THAT PULLED THE TRIGGER HAD MALICE IN HIS HEART. AND REMEMBER, MALICE CAN BE IMPLIED BY THE USE OF A DEADLY WEAPON.

AND FOR US TO PROVE MURDER, WE HAVE TO PROVE FOUR ELEMENTS. NUMBER ONE, THE DEFENDANTS WERE PRESENT. NUMBER TWO, THEY ACTIVELY PARTICIPATED IN THE COMMISSION OF A CRIME. NUMBER THREE, THE THIRD PARTY THAT PULLED THE TRIGGER HAD MALICE IN HIS HEART. AND NUMBER FOUR, THAT PHILLIP LEE DIED AS A RESULT OF A GUNSHOT WOUND TO THE BACK OF HIS HEAD.

I SUBMIT TO YOU, THREE OUT OF THE FOUR ARE NOT IN DISPUTE. THE ONLY ISSUE YOU HAVE TO DECIDE IS WHETHER OR NOT THEY ACTIVELY PARICIPATED.

THIS LEADS US TO THE NEXT CHARGE, LYNCHING IN THE FIRST DEGREE. THE MAIN DIFFERENCE BETWEEN LYNCHING AND MURDER IS, WITH LYNCHING YOU DON'T HAVE -- WE DON'T HAVE TO PROVE MALICE.

WHAT IS LYNCHING? LYNCHING, LADIES AND GENTLEMEN, MR. FOREMAN, IS MOB VIOLENCE. LYNCHING IN THE FIRST DEGREE, AN ACT OF VIOLENCE INFLICTED BY A MEMBER OF A MOB UPON THE BODY OF ANOTHER THAT RESULTS IN DEATH. AND REMEMBER, MALICE IS NOT AN ELEMENT OF LYNCHING IN THE FIRST DEGREE. IT'S VERY SIMPLE, AN ACT OF VIOLENCE INFLICTED BY A MEMBER OF THE MOB UPON THE BODY OF ANOTHER

RESULTING IN DEATH.

THIS BEGS THE QUESTION: WHAT IS MOB? THE LAW DEFINES FOR US WHAT A MOB IS, LADIES AND GENTLEMEN.

A MOB IS DEFINED FOR THE PURPOSE OF THIS ARTICLE OR THE STATUTE, THE ASSEMBLAGE OF TWO OR MORE PERSONS WITHOUT COLOR OR AUTHORITY, FOR THE PREMEDITATED PURPOSE AND WITH THE PREMEDITATED ATTEMPT OF COMMITTING AN ACT OF VIOLENCE. THERE'S A PREMEDITATION REQUIRED.

BUT THE LAW GOES FURTHER AND IT STATES: TO CONSTITUTE A MOB FOR LYNCHING IN THE FIRST DEGREE THE ASSEMBLAGE NEED NOT HAVE FORMED WITH A PREMEDITATED INTENT -- PURPOSE AND INTENT OF COMMITTING AN ACT OF VIOLENCE ON THE PERSON OF ANOTHER, BUT FORM THE REQUISITE PURPOSE AND INTENT AFTER THE PARTICIPANTS ARE ASSEMBLED.

WELL, THAT'S A LOT OF WORDS. WHAT IT MEANS IS THIS, THE INTENT TO CAUSE INJURY AND IN THIS CASE DEATH DOESN'T HAVE TO FORM, DOESN'T HAVE TO DEVELOP, UNTIL THE MOB IS ASSEMBLED.

WHAT MAKES IT LYNCHING IN THE FIRST DEGREE? DEATH, A DEATH OCCURS, THAT'S WHY IT'S LYNCHING IN THE FIRST DEGREE.

THE NEXT IMPORTANT THING THAT HIS HONOR'S GONNA INSTRUCT YOU ON THE LAW IS THAT YOU MUST KEEP -- YOU MUST KEEP EACH DEFENDANT, LUCIUS STATEN AND DUSHUN STATEN, SEPARATE AND INDEPENDENT.

WHEN YOU GO BACK TO YOUR JURY ROOM TO DELIBERATE, YOU MUST LOOK AT EACH DEFENDANT SEPARATELY AND INDEPENDENTLY. AND YOU MUST LOOK AT EACH CHARGE SEPARATELY AND INDEPENDENTLY.

HIS HONOR'S ALSO GONNA FURTHER YOU -- INSTRUCT YOU ON MERE PRESENCE. MERE PRESENCE AT THE SCENE OF A CRIME IS NOT ENOUGH TO CONVICT SOMEONE OF A CRIME. HOWEVER, MERE PRESENCE IS EVIDENCE OF A CRIME. IT DOES -- IN SOUTH CAROLINA, WHEN TWO OR MORE PEOPLE COME TOGETHER TO COMMIT A CRIME AND ONE PERSON COMMITS AN ACT OF VIOLENCE, EACH PERSON IS GUILTY OF THE SAME OFFENSE AS THE PRINCIPAL. IT'S CALLED THE HAND OF ONE IS THE HAND OF ALL. AND THE ACT OF ONE IS THE ACT OF ALL.

NOW WHAT DOES THIS MEAN? IT MEANS SIMPLY THIS, IF YOU HAVE TWO PEOPLE OR THREE PEOPLE OR FOUR OR FIVE, AND ALL THOSE PEOPLE COME TOGETHER TO COMMIT AN ACT OF VIOLENCE UPON THE PERSON, THE BODY OF ANOTHER PERSON, AND ONLY ONE PERSON COMMITS THAT ACT OF VIOLENCE, AND THE VICTIM DIES, EACH OF THOSE PEOPLE IS NOT ONLY GUILTY OF LYNCHING IN THE FIRST DEGREE BUT THEY CAN ALSO BE FOUND GUILTY OF MURDER BECAUSE THE HAND OF ONE IS THE HAND OF ALL.

CRIMINAL INTENT. IN EVERY CRIMINAL CASE IN SOUTH CAROLINA, THE STATE HOLDS THE BURDEN OF PROVING CRIMINAL INTENT. CRIMINAL INTENT IS WHAT IS IN A PERSON'S MIND.

WE CAN'T COME UP HERE AND OPEN UP SOMEONE'S BRAIN AND SAY, THIS IS WHAT THAT PERSON WAS THINKING ON THAT DAY. RATHER THE WAY THE STATE PROVES CRIMINAL INTENT IS THROUGH THE ACTIONS OF THE DEFENDANTS, THE STATEMENTS OF THE DEFENDANTS AND THE EVIDENCE IN THE CASE.

AND WHILE WE'RE ON EVIDENCE, THERE ARE TWO TYPES OF EVIDENCE, DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS WHAT SOMEONE SEES OR HEARS, THROUGH THEIR SENSES, THROUGH THEIR EVERYDAY LIFE EXPERIENCE, AND THEN THEY COME IN HERE AND SIT ON THIS WITNESS STAND AND TELL THE JURY.

CIRCUMSTANTIAL EVIDENCE IS A CHAIN OF EVENTS. THE CHAIN OF EVENTS THAT LEAD TO THE PROOF OF THE EXISTENCE OF A FACT.

LET ME GIVE YOU AN EXAMPLE OF CIRCUMSTANTIAL EVIDENCE. TONIGHT YOU GO HOME AND YOU WATCH THE NEWS AND YOUR FAVORITE LOCAL WEATHERMAN SAYS, IT'S GONNA SNOW TONIGHT WHICH IS UNCOMMON IN COLUMBIA, SOUTH CAROLINA. AND YOU LOOK OUTSIDE AND THERE'S NO SNOW ANYWHERE ON THE GROUND IN THE NEIGHBORHOOD. YOU GO TO BED. FALL ASLEEP. WAKE UP THE NEXT MORNING AND THE GROUND IS COVERED IN SNOW.

NOW DID YOU SEE IT SNOW? NO, THAT'S NOT DIRECT EVIDENCE. BUT YOU CAN PUT A CHAIN OF EVENTS TOGETHER TO BELIEVE THE EXISTENCE OF A FACT THAT IT SNOWED LAST NIGHT.

NOW COULD YOUR NEIGHBOR HAVE COME OUT AND USED A SNOW BLOWER AND BLOWN SNOW ALL OVER THE NEIGHBORHOOD? POSSIBLY BUT YOU HAVE TO ASK YOURSELF, IS IT REASONABLE?

THE NEXT THING WE'RE GONNA TALK ABOUT IS THE CREDIBILITY OF WITNESSES. HIS HONOR'S GONNA TELL YOU THAT YOU ALONE HAVE THE ABILITY TO JUDGE THE CREDIBILITY OR THE BELIEVABILITY OF EVERY SINGLE WITNESS THAT TOOK THAT STAND.

AND, LADIES AND GENTLEMEN, YOU DO THIS EVERY SINGLE DAY OF YOUR LIVES. IN EVERY SINGLE DAY OF YOUR LIFE, YOUR WALKS OF LIFE, YOU JUDGE THE CREDIBILITY AND BELIEVABILITY OF PEOPLE. WHETHER IT'S YOUR CO-WORKERS, YOUR FRIENDS, YOUR RELATIVES, YOUR CHILDREN, YOUR BOSS, YOU'VE BEEN JUDGING PEOPLE'S CREDIBILITY FOR AS LONG AS YOU CAN REMEMBER. AND THAT'S ALL YOU HAVE TO USE.

LADIES AND GENTLEMEN, THIS CASE IS ABOUT GOD GIVEN COMMONSENSE, USING YOUR GOD GIVEN COMMONSENSE. HERE ARE SOME FACTORS THAT YOU CAN USE TO JUDGE THE CREDIBILTY OF WITNESSES.

WHAT WAS THE WITNESSES DEMEANOR ON THE WITNESS STAND? WAS THE WITNESS FORTHRIGHT OR WAS HE OR SHE HESITANT? WAS THE TESTIMONY OF THE WITNESS CONSISTENT? WAS THE TESTIMONY OF THE WITNESS CORROBORATED, WAS IT SUPPORTED BY OTHER WITNESSES OR OTHER EVIDENCE? DID THE WITNESS HAVE REASON TO BE BIASED OR PREJUDICED?

YOU ALONE, YOU ALONE CAN SIT HERE AND JUDGE THE CREDIBILITY OR THE BELIEVABILITY OF A WITNESS.

THE LAST LEGAL PHRASE I'M GONNA TALK TO YOU FOLKS ABOUT IS THE BURDEN OF PROOF.

LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA WELCOMES, WE RELISH THE ABILITY TO COME IN HERE TO THIS COURTROOM IN FRONT OF TWELVE CITIZENS OF RICHLAND COUNTY AND PROVE THIS CASE BEYOND A REASONABLE DOUBT.

BEYOND A REASONABLE DOUBT IS NOT SOME IMPOSSIBLE LEGAL STANDARD THAT CAN NEVER BE MET. IT'S EXACTLY AS IT SOUNDS, PROOF BEYOND A REASONABLE DOUBT, EVERY ELEMENT PROVED BEYOND A REASONABLE DOUBT.

IT'S NOT PROOF BEYOND ANY DOUBT. IT IS NOT PROOF BEYOND A SHADOW OF A DOUBT. IT'S A REASONABLE DOUBT. AND AT THE END OF THIS TRIAL, IF YOU ARE FIRMLY CONVINCED, JUST FIRMLY CONVINCED OF THE DEFENDANTS' GUILT, THEN YOU MUST FIND THEM GUILTY.

I WANT TO THANK YOU FOR GIVING ME THE OPPORTUNITY TO COME UP HERE AND TALK ABOUT THE LAW. I HOPE THAT YOU GIVE MR. STRICKLER AND MR. TAYLOR AND MR. GASSER THE SAME ATTENTION THAT YOU'VE GIVEN ME.

ALL WE ASK, LADIES AND GENTLEMEN, IS THAT YOU KEEP AN OPEN MIND THROUGHOUT EVERYBODY'S OPENING STATE -- THROUGH EVERYBODY'S CLOSING ARGUMENT. JUST KEEP AN OPEN MIND AND GIVE US ONE MORE OPPORTUNITY TO COME BACK BEFORE

YOU AND LET MR. GASSER PROVE OUR CASE TO YOU.

IT'S KIND OF FUNNY. I'VE NEVER BEEN ON A JURY. I'VE NEVER SAT WHERE YOU ARE SEATED NOW, WHERE YOU SAT ALL WEEK BECAUSE OF WHERE I WORK, I'M NOT ALLOWED TO. BUT I OFTEN THINK HOW FRUSTRATING IT MUST BE. YOU CAN'T TALK. YOU CAN'T RAISE YOUR HAND AND ASK A QUESTION. AND YOU GET BACK TO YOUR JURY ROOM WITH YOUR FELLOW JURORS AND YOU CAN'T EVEN DISCUSS THE CASE. AND I CAN JUST IMAGINE SITTING THERE AND BEING FRUSTRATED WATCHING SOME PEOPLE ASK QUESTIONS AND SOME PEOPLE GIVE ANSWERS.

YOU KNOW WHAT THE IRONY OF THE SITUATION IS, LADIES AND GENTLEMEN OF THE JURY? YOU HAVE THE MOST POWERFUL VOICE IN THIS COURTROOM.

REMEMBER BACK IN MR. GASSER'S OPENING STATEMENT? THIS CASE IS ABOUT ACCOUNTABILITY AND RESPONSIBILITY. AND AT THE END OF THIS TRIAL, YOU HAVE THE OPPORTUNITY TO HOLD LUCIUS STATEN AND DUSHUN STATEN ACCOUNTABLE AND RESPONSIBLE FOR THE DEATH OF PHILLIP LEE.

AND YOU CAN DO THAT THROUGH ONE WORD AND THAT WORD IS GUILTY.

THE COURT: ALL RIGHT, MR. STRICKLER.

MR. STRICKLER: MAY IT PLEASE THE COURT, YOUR HONOR.

CLOSING ARGUMENT BY MR. STRICKLER ON BEHALF OF DEFENDANT LUCIUS STATEN:

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I NEED TO APOLOGIZE TO YOU IF I MISLED YOU AT THE BEGINNING OF THIS CASE BECAUSE I THINK I TOLD YOU THERE WAS ONE PIECE OF EVIDENCE THAT POINTED TO LUCIUS STATEN'S INVOLVEMENT IN THIS AND THAT WAS A NOD.

I WAS WRONG. WRONG BECAUSE I DIDN'T KNOW ABOUT THE OTHER ONE. MANNY "GET THE HAMMER" PERDUE AND YOU KNOW WHAT, I WASN'T THE ONLY PERSON WHO DIDN'T KNOW ABOUT THE OTHER ONE. MR. MEAD DIDN'T KNOW ABOUT THE OTHER ONE. MR. KENLEY DIDN'T KNOW ABOUT THE OTHER ONE. I DON'T KNOW WHEN AND YOU DON'T KNOW WHEN ANYONE FOUND OUT ABOUT THE OTHER ONE, MANNY "GET THE HAMMER" PERDUE.

SO I MISLED YOU. THERE'S NOT ONE PIECE OF EVIDENCE THAT POINTS TO LUCIUS'S INVOLVEMENT IN THE DEATH OF PHILLIP LEE, BECAUSE THAT'S WHAT WE'RE HERE ABOUT. I'M GONNA TALK ABOUT SOME OF THOSE.

BUT WE'RE HERE ABOUT WHETHER OR NOT HE PARTICIPATED IN KILLING PHILLIP LEE. WE'RE NOT HERE TO TALK ABOUT WHETHER HE WAS TRESPASSING AT BENEDICT COLLEGE. THAT'S NOT WHAT HE'S CHARGED WITH. WE'RE NOT HERE TO TALK ABOUT WHETHER OR NOT THERE WERE CONFRONTATIONS BETWEEN HIM AND PHILLIP LEE OR OTHER PEOPLE AT BENEDICT COLLEGE. WE'RE HERE TO TALK ABOUT WHETHER HE IS RESPONSIBLE AND INVOLVED IN THE KILLING OF PHILLIP LEE. THAT'S WHAT WE'RE HERE FOR, THAT'S WHAT YOU'RE HERE TO DECIDE.

NOW, THERE ARE TWO PIECES OF EVIDENCE THAT RELATE TO THAT NOW, MANNY "GET THE HAMMER" PERDUE AND A NOD.

NOW, I'M NOT SAYING THERE ISN'T OTHER EVIDENCE IN THIS CASE. THE STATE HAS PROVEN, BEYOND ANY DOUBT WHATSOEVER, THAT THE GREEN GALANT WAS PURCHASED BY LUCIUS. LUCIUS DOESN'T DENY THAT. THEY WENT TO GREAT LENGTHS TO PROVE THAT. THAT'S PROVED. OKAY?

NOW, IS THAT EVIDENCE. YEAH. IT PUTS THE GREEN -- AND THE GREEN GALANT WAS AT THE SCENE, IT PUTS HIS CAR AT THE SCENE. OKAY? THAT'S FINE. OKAY? HE'S NOT CHARGED WITH PARKING ILLEGALLY AT BENEDICT COLLEGE. HIS CAR'S AT THE SCENE. THAT HELPS PUT HIM AT THE SCENE. THAT'S WHY THE STATE PUTS IT IN. AND I DON'T HAVE A PROBLEM WITH THAT. OKAY?

EVIDENCE PROVING THAT HE PARTICIPATED IN THE KILLING OF PHILLIP LEE, THAT HE WAS PRESENT, AIDING OR ABETTING THE PERSON WHO ACTUALLY FIRED THE SHOT OR THAT HE PARTICIPATED IN A MOB THAT COMMITTED A MOB ACT AGAINST PHILLIP LEE. THAT'S WHAT THE PROOF HAD TO SHOW, THAT HE DID THESE THINGS. OKAY?

I'M GONNA -- IT'S HARD TO FIGURE OUT EXACTLY HOW TO GO ON THINGS IN A CASE LIKE THIS. BUT I PUT UP A SERIES OF WITNESSES AFTER AND BEFORE LUCIUS TESTIFIED. AND I PUT WITNESSES UP FOR A REASON. I PUT THEM UP FOR A REASON RELATING TO LUCIUS STATEN, NOT RELATING TO DUSHUN STATEN.

I'M NOT HERE TO DEFEND DUSHUN STATEN. I'LL TALK ABOUT THAT LATER. I'M HERE FOR LUCIUS STATEN.

THEY ARE TWO SEPARATE CASES. THEY ARE TWO SEPARATE PEOPLE. AND THERE ARE TWO SEPARATE VERDICTS WHICH CAN APPLY AND I SUBMIT SHOULD APPLY IN THESE CASES.

I'M GONNA TALK ABOUT LUCIUS STATEN.

FIRST, I WANT TO TALK ABOUT WHAT WE PUT UP AND WHY BECAUSE WHAT I DON'T WANT THIS CASE TO BE BASED ON IS INNUENDO, SUSPICION ON ANYONE'S PART OR IMPLICATIONS. AND THERE'S SOME IMPLICATIONS HERE.

YES, PEOPLE TESTIFIED THE CAR LEFT THE SCENE, YOU KNOW, EVERYONE PILED IN THE CAR. I'LL TALK ABOUT HOW RELIABLE TESTIMONY AT THE SCENE WAS IN A LITTLE WHILE. AND THAT THE CAR WAS LEFT IN THIS AREA UP IN IRMO. AND YOU'RE KIND OF LEFT WITH WONDERING WELL, WHEN DID IT GET THERE, HOW WAS IT DROPPED OFF, THEY DRIVE IT UP THERE, BECAUSE THE TESTIMONY FROM THE STATE'S WITNESSES WASN'T THAT CLEAR AS TO EXACTLY WHEN I GOT THERE.

WE HAD IT THERE ON THE MORNING OF THE 17TH. BROUGHT IN MR. MCAUGHTON, THE GUY THAT OWNED THE BUSINESS, HAD THE CHURCH SERVICES THERE, MEETINGS THERE ON TUESDAY NIGHT. THAT'D BE THE 16TH. WASN'T THERE WHEN IT STARTED AND I FRANKLY CAN'T REMEMBER STARTED -- THE MEETING STARTED AT 6:00 OR 7:00, I CAN'T REMEMBER EXACTLY, ENDED ABOUT 9:00. WASN'T THERE WHEN IT STARTED, WAS THERE WHEN IT ENDED.

OKAY.

WELL, RATHER THAN BEING LEFT WONDERING WHEN IT GOT THERE, WE KNOW THAT IT GOT THERE SOMEWHERE BETWEEN 6:00 AND 9:00 ON THE NIGHT OF THE 16TH. OKAY?

WELL, WHY IS THAT IMPORTANT AND IT REALLY DOESN'T MATTER, DOES IT? IT GOT DITCHED IN THE COUNTY? WELL, THE INNUENDO -- YOU SEE, THERE'S THIS MAP HERE. IT'S NOT IN EVIDENCE BECAUSE IT'S NOT THE MAP THAT WAS ACTUALLY SEEN. WE'VE GOT THE MAP -- YOU HAVE A MAP FROM ANOTHER WITNESS I'LL TALK ABOUT. BUT SEE THERE WAS A MAP IN THE FRONT SEAT OF THE DAEWOO WHEN THEY SEARCHED THE HOUSE ON THE 23RD. OKAY? IT WAS FOLDED TO THAT AREA. OKAY? FOLDED TO THE AREA WHERE THE CAR WAS FOUND.

THE IMPLICATION TO BE DRAWN FROM THAT IS THAT THEY TOOK THE MAP, FIGURED A PLACE THEY COULD GO DITCH THE CAR. WELL, THAT'S FINE EXCEPT FOR WE BROUGHT IN MR. RUGGLES, THE GUY FROM THE COMPANY THAT PUTS PEOPLE IN TOUCH WITH PLACES TO RENT. OKAY?

AND YOU'VE GOT A DOCUMENT IN HERE SOMEWHERE, RIGHT HERE, DEFENDANT'S THREE, WHICH SHOWS THAT LUCIUS STATEN CAME BY HIS PLACE OF BUSINESS JANUARY 17TH. OKAY? DAY AFTER THE 16TH, 10:30 IN THE MORNING, GOT INFORMATION ON LOCATIONS IN TWO -- THESE TWO AREAS, ONE OF WHICH IS IRMO-ST. ANDREWS. PAID $69.00 FOR THE INFORMATION, PAID $3.00 FOR A MAP LIKE WHICH IS FOLDED TO THE AREA OF IRMO AND ST.

ANDREWS, WHICH WAS OBTAINED AFTER THE CAR HAD BEEN LEFT UP THERE WHICH HAS NOTHING TO DO WITH DITCHING THE CAR.

AND IF I DON'T BRING THAT WITNESS IN, THE IMPLICATION THAT YOU'RE LEFT WITH IS THAT THEY CONSULTED THE MAP IN ORDER TO DITCH THE CAR. SO I PUT WITNESSES UP FOR A REASON. OKAY?

MS. GABLE, I PUT UP, YOU HEARD TESTIMONY THAT STUFF WAS PACKED IN BOXES LIKE THEY'RE GETTING READY TO LEAVE. WELL, I BROUGHT HER IN, YOU KNOW, BECAUSE THEY'RE GETTING READY TO LEAVE BECAUSE THEY WANT TO DISAPPEAR. THAT'S THE IMPLICATION YOU'RE GONNA BE LEFT WITH UNLESS I DO SOMETHING ABOUT THAT.

THE SOMETHING I DID IS BRING IN A COPY OF THEIR -- THE PAYMENT RECORD AT ZIMALCREST TO SHOW THEY'RE -- YOU KNOW, THEY'RE BEHIND ON THEIR RENT, A COUPLE OF MONTHS BEHIND ON THEIR RENT. AND THEN LUCIUS TELLS YOU WHAT THEY'RE GETTING READY TO DO. THEY'VE BEEN PACKED UP. THE REASON BEING, NOT BECAUSE OF AN INCIDENT ON JANUARY THE 15TH, THE REASON BEING BECAUSE THEY WANT TO GET OUT OF THAT PLACE, ZIMALCREST. THEY HAVEN'T BEEN PAYING THE RENT ON IT.

SO, YOU KNOW, HAVE TO GO AHEAD AND COMBAT ANY IMPLICATIONS PEOPLE WANT YOU TO HAVE FROM EVIDENCE THAT YOU HEAR.

MR. COPELAND -- YOU KNOW, I DIDN'T FIND THESE

WITNESSES. I GOT ON THIS CASE LATE. MR. TAYLOR FOUND THOSE WITNESSES. HE'S GOT REASON HE MAY WANT TO PUT THEM UP AS FAR AS -- AS FAR AS DUSHUN GOES. I'VE GOT REASONS I WANT TO PUT THEM UP AS FAR AS LUCIUS GOES.

LUCIOUS TOLD MR. MEAD IN HIS ORAL STATEMENT, I RAN FROM THE SCENE, GOT PICKED UP BY A GUY WHO TOOK THEM TO THE GAS STATION.

WELL, LOW AND BEHOLD, YOU DO A LITTLE LOOKING, DO A LITTLE DIGGING, YOU FIND MR. COPELAND. HE DOESN'T WEAR RED AND HE DOESN'T WEAR BLUE. DOESN'T GO TO BENEDICT. DOESN'T KNOW LUCIUS STATEN FROM ADAM'S HOUSECAT.

ALL RIGHT, A LITTLE SHAKY ON HIS TIMES? WELL, HE FINALLY SAT DOWN AND TALKED WITH SOMEONE ABOUT WHO HE PICKED UP, FEBRUARY OF THIS YEAR, EVIDENTLY. ALL RIGHT? HE PICKED THEM UP. HE IDENTIFIED THEM AS THE PEOPLE HE PICKED UP, THIS A.M.E. MINISTER. HE IDENTIFIED PICKING THEM UP ON THAT NIGHT AT THE LOCATION LUCIUS SAID HE WAS PICKED UP AT AND TAKING THEM WHERE LUCIUS SAID HE WAS TAKEN.

NOW EITHER THAT HAPPENED OR THEY FLED IN THE GREEN GALANT AS WITNESSES AT THE SCENE SAY. OKAY? CAN'T BE BOTH, I DON'T THINK. OKAY?

SO, YOU BRING IN WITNESSES FOR A REASON. I BROUGHT IN BRANDON McCANTS. HAD TO SUBPOENA HIM DOWN HERE FROM NEW YORK.

BRANDON? WHY'D I BRING HIM IN? I DON'T CARE -- I'LL TALK WITH YOU ABOUT THIS A LITTLE BIT LATER. I DON'T CARE WHO HE SAYS DID THE SHOOTING. THERE'S A REASON -- MR. TAYLOR AND DUSHUN MAY CARE WHETHER HE SAYS WHO DID THE SHOOTING. I DON'T.

LUCIUS TOLD THE POLICE HE LEFT THE PLACE, HE WAS AWAY FROM THE PLACE, HE CAME BACK AND THE THING HAD ALREADY STARTED UP. THERE ARE WITNESSES WHO SAY THEY SAW HIM COME BACK, GET OUT OF WHITE CAR. AND THEY'RE WRONG.

THERE ARE WITNESSES WHO SAY THEY THOUGHT HE WAS IN A CAR AT THE SCENE AND JUST CAME UP LATER. WELL, THEY'RE WRONG.

THERE'S LUCIUS WHO SAID, "I'M WENT OUT TO CIRCUIT CITY. NOTHING WAS HAPPENING ON CAMPUS WHEN I LEFT. I WENT OUT, WHEN I CAME BACK, THAT'S WHAT I SAW. THAT'S WHAT I WALKED INTO AND I WENT WITH A GUY." DESCRIBED HIM AND LOW AND BEHOLD BRANDON McANTS EXISTS AND BRANDON McCANTS SAYS, "YES, THAT'S THE SEQUENCE OF EVENTS".

SO HE WASN'T THERE AND MOST OF THE STATE'S WITNESSES ACTUALLY AGREE WITH THIS. BUT TO THE EXTENT WITNESSES WANTED TO PUT HIM ON THE SCENE AND JUST COMING UP A LITTLE BIT LATER, Y'ALL NEED TO KNOW AND IT'S MY JOB TO SHOW YOU, I CAN, THAT HE WASN'T.

SO WHATEVER KIND OF TROUBLE GOT STARTED THERE, GOT STARTED WITHOUT HIS PARTICIPATION.

SO, WE'RE NOT HERE TO TRY A CASE BASED ON INNUENDO, SUSPICION, IMPLICATIONS. WE'RE HERE TO TRY A CASE BASED ON PROOF, PROOF.

NOW, LUCIUS IS PROBABLY GONNA HATE ME FOR THIS. FEEL FREE TO HATE ME. I TOLD HIM THIS MORNING AND I'LL TELL YOU NOW, I'M HERE TO REPRESENT HIM. I'M NOT HERE TO REPRESENT DUSHUN.

LUCIUS DOESN'T WEAR RED. NO ONE'S EVER SAID, NONE OF THE STATE'S WITNESSES, THAT HE WAS INVOLVED IN WEARING RED. LUCIUS DOESN'T START THE CONFRONTATIONS. YOU HEARD THE WITNESSES TALK ABOUT THE CONFRONTATIONS. HE DOESN'T START THE CONFRONTATIONS. HE STEPS IN WITH HIS LITTLE BROTHER.

LUCIUS IS GONNA HATE ME FOR THIS. HE PROTECTED HIM THEN PHYSICALLY. I'D SUBMIT YOUR VIEW OF THE EVIDENCE COULD REASONABLY CONCLUDE THAT HE IS PROTECTING HIM NOW AS HE DID THEN, AT THE RISK OF PUTTING HIMSELF IN JEOPARDY, JEOPARDY OF BEING CONVICTED OF THE MOST SERIOUS CRIME KNOWN UNDER THE LAWS OF THIS STATE.

HERE'S THE CHOICE YOU HAVE TO MAKE. COME COMPLETELY CLEAN ABOUT WHAT HAPPENED -- MAYBE HE WAS COMPLETELY CLEAN ABOUT WHAT HAPPENED IN HIS TESTIMONY. Y'ALL ARE GONNA BE THE JUDGES OF THAT. IF YOU THINK PERHAPS HE DOWNPLAYED SOME THINGS, THINK PERHAPS ABOUT WHY THINGS ARE DOWNPLAYED AND WHO HE'S PROTECTING.

BECAUSE IF YOU COME COMPLETELY CLEAN, IF THAT'S THE CASE, IF YOU COME COMPLETELY CLEAN, YOU POINT AT YOUR BROTHER AS BEING INVOLVED AND YOU PUT YOUR BROTHER IN JEOPARDY. YOU'VE GOT THE CHOICE OF DOING THAT OR ONCE AGAIN PROTECTING HIS BROTHER.

THAT'S NOT A CHOICE I'D LIKE TO HAVE TO MAKE. THAT IS NOT A CHOICE THAT'S COMFORTABLE FOR ANYONE TO MAKE. AND I SUBMIT THAT'S PROBABLY THE CHOICE LUCIUS HAS TO MAKE.

OLDER BROTHER, YOUNGER BROTHER, COULDN'T MANAGE TO FIND ANYONE THAT HAD ANY BROTHERS. I'M ONE OF FOUR AND HAVE TWO YOUNGER BROTHERS. IF YOU'VE EVER BEEN IN THAT SITUATION, YOU KNOW WHAT IT'S LIKE TO BE THE BIGGEST OF A GROUP OF BROTHERS.

DIDN'T WEAR RED. BROKE THINGS UP. THIS IS FROM THE MOUTHS OF THE STATE'S WITNESSES, YOU KNOW. THEY GO AHEAD AND THEY DON'T PAINT HIM IN THE GREATEST LIGHT AROUND BUT, YOU KNOW, WHO WAS IT TALKING ABOUT THE INCIDENT ON THE 15TH, RASHON LOGGINS. HE TRIED -- THESE ARE RUSHON'S WORDS. HE TRIED TO QUASH THE SITUATION. "Y'ALL NEED TO GO. Y'ALL NEED TO GET IN THE CAR." OKAY?

YOU KNOW, IMPLICATIONS AGAIN, YOU HAD MR. BRITT ON THE STAND HERE WHO TALKED ABOUT SEEING PHIL LEE ON SUNDAY AFTERNOON, COME IN HIS ROOM ALL UPSET, BANGING THINGS, BECAUSE SOMEONE HAD PULLED A GUN ON HIM. OKAY? "ONE OF

THOSE GUYS THAT PULLED A GUN ON ME."

THAT'S WHERE THAT WAS LEFT AT THE END OF HIS DIRECT TESTIMONY. I HAD TO GET UP AND CROSS EXAMINE AND BRING OUT THE FACT THAT WELL, WHAT HE ACTUALLY HAD SAID, WHAT PHIL LEE HAD ACTUALLY SAID TO HIM, IS THAT, "LITTLE BROTHER HAD PULLED A GUN ON HIM ON SUNDAY AFTERNOON". AND THAT PHILLIP LEE HAD NEVER MENTIONED ANYTHING ABOUT LUCIUS STATEN ON SUNDAY AFTERNOON.

AND INDEED THERE IS NO MENTION OF LUCIUS STATEN BEING INVOLVED IN ANY CONFRONTATION WITH PHILLIP LEE ON SUNDAY AFTERNOON. THERE'S NO MENTION THAT HE WAS ON CAMPUS AT BENEDICT ON SUNDAY AFTERNOON, IF INDEED ALL THAT HAPPENED, THAT A GUN WAS PULLED ON PHIL LEE. NO MENTION LUCIUS WAS THERE. AND THE ONLY MENTION IS THAT DUSHUN HAD DONE SOMETHING LIKE THAT.

TILL THE GUY GETS CROSS EXAMINED, THAT EVIDENCE IS NOT BROUGHT FORWARD. OKAY? I DON'T APOLOGIZE FOR ANYTHING I'VE DONE IN THIS COURTROOM. I DON'T KNOW AND I NEVER WILL.

I'M HERE TO DEFEND SOMEONE. I'M HERE TO SERVE A PURPOSE, YOU KNOW. EVERY PARTY IN THIS COURTROOM HAS A ROLE. THAT'S RIGHT. THEY PUT PEOPLE UP. THEY PRESENT EVIDENCE AND THEN I CROSS EXAMINE PEOPLE, JUST AS THEY DO TO MY WITNESSES. THE THEORY IS, YOU PUT THEM UP AND YOU SUBJECT THEIR TESTIMONY TO SCRUTINY AND SOMEHOW YOU

DEVELOP WHAT THE TRUTH IS. ALL RIGHT?

I'M HERE TO APPLY PRESSURE. I DON'T APOLOGIZE FOR THAT. LUCIUS STATEN DESERVED NOTHING LESS.

YOU KNOW, DID LUCIUS TRY TO COVER UP WHAT HAPPENED WITH THE CAR? WE TALK ABOUT CREDIBILITY OF WITNESSES, WHETHER THEY TOLD ALL THE TRUTH HERE. YEAH, LUCIUS TRIED TO COVER UP WHAT HAPPENED WITH THE CAR. LUCIUS TRIED TO COVER UP THE CAR. HE DIDN'T DITCH THE CAR BECAUSE HE WASN'T IN THE CAR WHEN IT LEFT THE SCENE.

MR. GASSER ASKED HIM, "DO YOU KNOW WHAT HAPPENED TO THE CAR?" HE SAID, "YEAH, YEAH". WILSON, ONE OF THE GUYS THAT'S NOT CHARGED OR NOT BEING TRIED RIGHT NOW, SHAKEEM WILSON, OKAY, JUMPED IN THE CAR AND DROVE OFF. "DID YOU SEE SHAKEEM LATER THAT NIGHT?" "YEAH." "DID YOU FIND OUT WHAT HAPPENED?" "YEAH, HE DITCHED THE CAR IN SOME -- IN SOME APARTMENTS, LEFT THE KEYS IN IT."

WELL, YOU KNOW, THAT'S WHAT SHAKEEM TOLD HIM. OKAY?

WHAT WE DO KNOW, AGAIN, IS THAT MR. COPELAND PICKED HIM UP AND HE WASN'T DRIVING A GREEN CAR THEN. THEY PICKED HIM UP RIGHT BY ALLEN AND GAVE HIM A RIDE. OKAY?

SO SHAKEEM DITCHED THE CAR AND WHERE IT GOES FROM THERE, I DON'T KNOW. ALL RIGHT? BUT THERE'S NO LINK TO LUCIUS DITCHING THE CAR IN THE NORTHERN PART OF THIS COUNTY.

DID HE TRY TO COVER IT UP? SURE BECAUSE IT LINKS

HIM TO THE SCENE OF A HOMICIDE. WELL, IF HE'D JUST BEEN STRAIGHT ABOUT IT HE WOULDN'T HAVE BEEN CHARGED WITH MURDER.

DO YOU HONESTLY THINK THAT'S TRUE? DO YOU HONESTLY THINK THAT IF HE TOLD THEM, "YEAH, I WAS THERE BUT I DIDN'T DO ANYTHING." WHICH IS, BY THE WAY, WHAT HE DID TELL THEM ON THE 23RD. THEY SAID, "OH, OKAY, FINE, WE WON'T CHARGE YOU."

NO, IF HE HAD TOLD THEM THAT ON THE NIGHT OF THE 15TH AND THEY DEVELOPED THE OTHER EVIDENCE THAT THEY HAVE AND THEY PRESENTED TO YOU, DO YOU HONESTLY THINK, AS THE SOLICITOR WOULD HAVE YOU BELIEVE, THAT THE POLICE WOULD THEN SAY, "OH, WELL, YOU TOLD US YOU WEREN'T THERE -- YOU WEREN'T INVOLVED IN IT. SEE YA. FINE, YOU'VE BEEN COMPLETELY HONEST WITH YOU (SIC) AND THIS OTHER EVIDENCE THAT WE'RE USING TO CONVICT YOU RIGHT NOW, WE'RE JUST GONNA FORGET ABOUT."

BALDERDASH. HE DIDN'T COME BACK AND HANG OUT AT THE SCENE BECAUSE, YOU KNOW, IF HE'S COMPLETELY INNOCENT HE'D JUST COME RIGHT BACK TO THE SCENE AND START HANGING OUT AGAIN.

COME ON, FOLKS, Y'ALL DIDN'T CHECK YOUR COMMONSENSE AT THE DOOR. COMMONSENSE IS WHAT YOU BRING TO THIS JOB. ALL RIGHT? AND COMMONSENSE SAYS, NO.

INVOLVED, NOT INVOLVED, ANYWHERE HOOKED UP IN IT AND

YOU DON'T WANT ANYMORE ASSOCIATIONS WITH THAT AREA AT ALL.

YOU KNOW, DID LUCIUS SUSPECT HE WAS IN TROUBLE? YOU SAW LUCIUS. HE'S NOT A DUMB GUY. HE KNEW HE WAS IN TROUBLE. HE KNEW HE WAS IN TROUBLE.

HERE'S THE DEAL. WHAT DID HE DO? THAT'S FOR YOU GUYS. WHAT DID HE DO? PARTICIPATE IN THE KILLING?

YOU KNOW, HE SAID IT BEST HIMSELF. I TALKED WITH HIM. "YOU DIDN'T GIVE A WRITTEN STATEMENT. WHY?" "BECAUSE YOU TAKE MY WORDS, TWIST THEM AROUND AND USE THEM AGAINST ME. I TOLD YOU WHAT I CAN TELL YOU. WRITE IT DOWN AND YOU TAKE MY WORDS, TWIST THEM AROUND AND USE THEM AGAINST ME." WELL, AS HIS ACTIONS HAVE BEEN TAKEN, TWISTED AROUND AND ATTEMPTED TO BE USED AGAINST HIM. BOXES IN THE HOUSE, MAP IN THE CAR, YOU KNOW, NO -- I MEAN, POLICE JUST DON'T CARE WHETHER HE WENT TO CIRCUIT CITY OR NOT. OKAY?

AND I'M NOT INDICTING THE POLICE FOR THAT. HERE'S -- HERE'S -- YOU KNOW, UNFORTUNATELY WE LIVE IN A TOWN THAT HAS IT'S SHARE OF SERIOUS CRIME. POLICE OFFICERS HAVE TO INVESTIGATE THEIR SHARE OF SERIOUS CRIME. AND YOU DO THE INVESTIGATION, YOU SATISFY YOURSELF AND THEN YOU MOVE ON TO THE NEXT THING. OKAY? AND THINGS ARE LEFT OUT THERE THAT AREN'T CHECKED ON. THINGS THAT ARE LEFT OUT THERE THAT SHOULD BE CHECKED ON.

THE MAN WHO PICKED THEM UP AT ALLEN. WHETHER OR NOT

INDEED HE WAS NOT PRESENT AT THE SCENE. IF YOU WANT THE TRUTH ABOUT SOMETHING, THEN YOU GET THE TRUTH ABOUT SOMETHING.

SO THE PROOF. AT THE BEGINNING, A NOD. WHAT DOES A NOD CONVEY? "Y'ALL GET IN THE CAR. AND I'M TALKING TO YOU TOO." HE DOESN'T EVEN KNOW HIM. "Y'ALL GET OUT OF HERE. I'M TALKING TO YOU TOO." WHAT DOES IT CONVEY?

THE BURDEN OF PROOF IS ON THE STATE OF SOUTH CAROLINA TO PROVE GUILT BEYOND A REASONABLE DOUBT. NOW, YOU KNOW, YOU CAN -- YOU CAN PHRASE IT ANYWAY YOU WANT TO. YOU CAN TALK ABOUT IT HAS TO BE A SUBSTANTIAL DOUBT, THIS, THAT AND THE OTHER. YOU'LL HEAR HIS HONOR CHARGE YOU ON THAT.

HERE'S WHAT PROOF BEYOND A REASONABLE DOUBT IS. PROOF BEYOND A REASONABLE DOUBT -- AND I CHALLENGE ANYONE TO DISAGREE WITH ME ON THIS. PROOF BEYOND A REASONABLE DOUBT IS THE HIGHEST DEGREE OF PROOF REQUIRED IN ANY CASE IN THIS LAND. IT IS THE STRONGEST PROOF REQUIRED IN ANY CASE IN THIS LAND.

WE'RE NOT TALKING ABOUT A CAR WRECK HERE. WE'RE TALKING ABOUT A TRAGEDY TO PHILLIP LEE AND WE'RE TALKING ABOUT, I SUBMIT, A TRAGEDY TO LUCIUS STATEN. AND THE LAW SAYS IN CRIMINAL CASES, YOU KNOW -- IN A CAR WRECK, YOU THINK SOMEONE'S PROVED SOMETHING JUST BY A LITTLE BIT MORE THAN THE OTHER SIDE. THEY WIN. THAT'S PROOF BY

PREPONDERANCE OF THE EVIDENCE.

YOU HAVE PROOF BY CLEAR AND CONVINCING EVIDENCE. AND THEN YOU HAVE THE HIGHEST STANDARD KNOWN IN THE LAWS OF THIS LAND AND THAT IS PROOF BEYOND A REASONABLE DOUBT.

WHY? BECAUSE WE'RE NOT TALKING MONEY HERE. WE'RE NOT RESOLVING SOME CONTRACT DISPUTE HERE. WE'RE TALKING ABOUT BRANDING, THIS MAN. THIS MAN RIGHT HERE, WE'RE TALKING ABOUT BRANDING HIM WITH THE LABEL OF MURDERER FOR THE REST OF HIS LIFE.

THE LAW SAYS BEFORE YOU DO THAT YOU BETTER BE SURE. AND YOU CAN PHRASE THAT ANYWAY YOU WANT. YOU'RE GONNA HEAR IT PHRASED A BUNCH OF WAYS. BUT THE LAW SAYS YOU BETTER BE AS SURE AS YOU ARE SURE ABOUT ANYTHING UNDER THE LAW BEFORE YOU DO THAT, BEFORE YOU BRAND HIM, BEFORE THE LAW BRANDS HIM. I'M NOT GONNA PUT THAT ON YOU. BUT THAT'S THE EFFECT OF YOUR VERDICT IF YOU RETURN A VERDICT OF GUILTY. BEFORE THE LAW BRANDS HIM WITH A BIG "M" ACROSS HIS FOREHEAD AS A MURDER.

BECAUSE HE'S CHARGED AS AN ACCESSORY, AS AN ACCOMPLICE, DON'T GET CONFUSED BY THAT. IF HE IS CONVICTED AS AN ACCESSORY OR AS AN -- AS AN ACCOMPLICE, THEN HE IS GUILTY OF MURDER AND HE IS NO DIFFERENT, UNDER THE EYES OF THE LAW, THAN THE PERSON WHO PULLED THE TRIGGER.

SO THAT'S THE EFFECT OF THE VERDICT OF GUILTY.

WE'RE NOT PLAYING HERE. I KNOW NONE OF YOU THINK THAT BUT WE'RE NOT PLAYING HERE.

HE'S HERE TO DETERMINE WHETHER HE PARTICIPATED IN A MOB ACTION OR PARTICIPATED IN THE SLAYING OF ANOTHER HUMAN BEING. AND IF THAT COMES DOWN TO A NOD OF HIS HEAD, WITH ALL DUE RESPECT, GOD SAVE US ALL, EACH AND EVERYONE OF US.

AND IF IT COMES DOWN TO THE WORD OF MANNY "GET THE HAMMER" PERDUE, WHO DIDN'T THINK ENOUGH OF IT A DAY AFTER THE INCIDENT OR THREE DAYS AFTER THE INCIDENT TO GO AHEAD AND IDENTIFY THE PERSON INVOLVED IN THE KILLING OF HIS GOOD FRIEND, BUT COMES DOWN A YEAR, THIRTEEN MONTHS LATER AND DOES THAT, THEN GOD SAVE EACH AND EVERYONE OF US, MANNY "GET THE HAMMER" PERDUE.

MY COACH TOLD ME. MY DAD TOLD ME. COACH AND DAD DIDN'T SHOW UP DOWN HERE TO GO AHEAD AND BACK HIM UP ON THAT, DID THEY?

YOU KNOW, MANNY "PHILLY" PERDUE. PHILLY, RIGHT NEXT TO JERSEY, RIGHT NEXT NEW YORK, RIGHT NEXT TO EVERYONE WHO -- WHERE EVERYONE OF THE WITNESSES FOR THE STATE IN THIS CASE LIVES, RIGHT NEXT TO WHERE THE FAMILY OF THE VICTIM LIVES.

YOU KNOW, ONCE YOU IMPLY PRESSURE OR FEAR OF LUCIUS STATEN FOR NOT GIVING THE STATEMENT AT THE TIME OF THE INCIDENT, HOW ABOUT PRESSURE OR FEAR FROM ANYONE OF A NUMBER OF OTHER PEOPLE IN THE THIRTEEN MONTHS SINCE THIS

THING HAPPENED, MANNY "THE GET ME THE HAMMER" PERDUE. BE ASHAMED THAT YOU RELY ON THAT EVIDENCE TO SEND THIS MAN -- TO CONVICT THIS MAN OF THE MOST SERIOUS CRIME KNOW UNDER THE LAWS OF THIS LAND, FOR SHAME.

BECAUSE IF YOU DON'T HAVE THAT, ALL YOU'VE GOT'S A NOD AND FOR SHAME IF ANYONE CONVICTS ANYONE, SOMEONE ON THE BASIS OF A NOD. I APOLOGIZE.

WE'RE NOT HERE ON A TRESPASSING CHARGE. I DON'T CONDONE WHAT HAPPENED TO MR. LEE WHO LIVED IN THIS COMMUNITY. I DON'T CONDONE CONVICTING INNOCENT PEOPLE. I LIVE IN THIS COMMUNITY.

I'M AT A DISADVANTAGE. HE'S GONNA TALK AND HE'S GONNA TALK. THEY'LL BE ABLE TO RESPOND, AND I'M SURE THEY WILL, TO ANYTHING I'VE SAID. I CAN'T RESPOND TO A ONE OF THEM. THIS IS IT FOR ME. THIS IS IT FOR LUCIUS, NOW.

SO IF RESPONSE IS NECESSARY, I HAVE TO ASK YOUR ASSISTANCE IN THAT. THAT'S ALL I CAN DO.

I'VE GOTTEN A LITTLE UPSET HERE AND I APOLOGIZE. I DON'T WANT Y'ALL TO BE UPSET. I WISH YOU, ACTUALLY, WHEN YOU RETIRE TO THE ROOM, PEACE. THAT'S WHAT I WISH YOU, INNER PEACE, THE PEACE TO DO JUSTICE TO ALL THE PARTIES IN THIS CASE, THE PEACE NOT TO BE SWAYED BY EMOTION, THE PEACE TO APPLY THE LAW AS HIS HONOR CHARGES IT TO YOU, SPECIFICALLY AS TO CREDIBILITY, THE PEACE TO JUDGE LUCIUS STATEN FOR WHAT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT

THAT HE DID, THE PEACE TO APPLY THE HIGHEST STANDARD KNOWN TO ALL, TO HIS CASE, THE MAN THAT BROKE UP FIGHTS, TO THE MAN WHO PUT HIMSELF IN JEOPARDY FOR HIS BROTHER AND CONTINUES TO BE IN JEOPARDY FOR HIS BROTHER.

AND I DO WISH YOU THAT PEACE. I PRAY THAT PEACE WILL HELP YOU DO YOUR JOB WHICH IS TO RETURN A VERDICT THAT SPEAKS THE TRUTH, NOT A VERDICT THAT'S AFFECTED BY SUSPICION, NOT A VERDICT AFFECTED BY BIAS OR PREJUDICE, NOT A VERDICT BASED ON CONJECTURE.

IF YOU DO THAT, YOU RETURN A VERDICT THAT SPEAKS THE TRUTH, AND AS TO LUCIUS STATEN, THAT VERDICT'S NOT GUILTY. PLEASE DO THE RIGHT THING.

I CAN'T BEG OF YOU STRONGLY ENOUGH. IF I COULD STAND UP HERE ANOTHER HOUR AND KNOW THAT THAT WOULD CONVINCE ONE PERSON OF WHAT I'M SAYING, I WOULD.

RETURN A VERDICT THAT SPEAKS THE TRUTH. LUCIUS STATEN IS NOT GUILTY. HE IS NOT PROVEN GUILTY. ANY OTHER VERDICT WILL BE A SHAME.

THANK YOU.

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, LET'S TAKE ABOUT FIVE MINUTES AND WE'LL ACTUALLY GO TO YOUR JURY ROOM FOR ABOUT FIVE MINUTES. THEN WE'LL COME BACK AND HEAR FROM MR. TAYLOR.

(JURY OUT AT 11:25 A.M.)

THE COURT: ALL RIGHT. THIS IS GONNA BE A QUICK

FIVE MINUTES AND THEN WE'LL COME BACK.

(COURT IS IN RECESS.)

THE BAILIFF: COURT COME TO ORDER. ALL RISE, PLEASE.

THE COURT: THANK YOU. PLEASE BE SEATED.

ALL RIGHT. Y'ALL READY TO GO?

BRING THE JURY IN, PLEASE, SIR.

(JURY IN AT 11:30 A.M.)

THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT, MR. TAYLOR.

MR. TAYLOR: THANK YOU VERY MUCH. MAY IT PLEASE THE COURT.

CLOSING ARGUMENT BY MR. TAYLOR ON BEHALF OF DEFENDANT DUSHUN STATEN:

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IT'S FRIDAY MORNING, 11:30. WE'VE BEEN HERE ALL WEEK. WE KNOW YOU'RE TIRED. WE'RE TIRED. EVERYBODY'S TIRED.

WE'RE GLAD THAT WE COULD CUT OUT THE TESTIMONY OF DUSHUN STATEN BECAUSE WHAT HE HAD TO SAY HAS ALREADY BEEN COVERED IN THE EVIDENCE, COVERED BY HIS BROTHER YESTERDAY AND THE STATEMENTS GIVEN TO POLICE OFFICERS AND STATEMENTS THAT OFFICER MEAD MADE TO YOU.

NOW I WANT TO TALK TO YOU THOUGH ABOUT SOME THINGS THAT ARE VERY IMPORTANT IN THIS CASE.

THE POLICE OFFICER TOLD YOU THAT MY CLIENT WAS

INVITED DOWN TO POLICE HEADQUARTERS TO GIVE A STATEMENT. THAT'S WHAT HE SAID WHEN THE PROSECUTOR WAS QUESTIONING HIM.

BUT WHEN I QUESTIONED HIM HE ADMITTED THAT THEY KNOCKED THE DOOR DOWN, KNOCKED MY CLIENT ONTO THE FLOOR. HE WAS IN THE LIVING ROOM, THE FIRST PERSON THEY SAW. PUT CUFFS ON HIM, CUFFED HIM BEHIND HIS BACK. PUT HIM IN A POLICE CAR, TOOK HIM TO THE COLUMBIA POLICE DEPARTMENT AND INTERROGATED HIM.

HE MIGHT WANT TO USE THE WORD "INTERVIEW". BUT YOU CAN BET IT WAS AN INTERROGATION. MY CLIENT DIDN'T ARRIVE THERE IN A TAXI. THAT'S NOT HOW HE GOT THERE.

HOW SCARED DO YOU SUPPOSE DUSHUN STATEN WAS AT THAT TIME. HOW AFRAID DO YOU IMAGINE HE HAD TO BE, AS EVERYONE WOULD BE, UNDER THOSE CIRCUMSTANCES? HOW SCARED, HOW FRIGHTENED, HOW ANGUISHED, ESPECIALLY AFTER HAVING SEEN WHAT HE HAD SEEN ON MONDAY NIGHT THE 15TH, WHICH OCCURRED NOT TOO FAR FROM HIM, A VERY TRAGIC THING, A VERY SHOCKING THING, A HORRIBLE THING, A SCARY THING.

AND PROBABLY IN A PLACE LIKE THAT, IF YOU SEE SOMETHING LIKE THAT, YOU DON'T EVER WANT TO RETURN TO THAT PLACE AGAIN EVER. THEY MADE A DEAL OUT OF THEIR NOT GOING BACK OVER THERE ANYMORE AFTERWARDS. WOULDN'T EVER GO BACK.

NOW, THE STATE'S THEORY -- AND LET ME POINT OUT TO

YOU THAT THAT'S WHAT IT IS, IT'S THEIR THEORY, IS THAT MY CLIENT AND HIS BROTHER ENTERED INTO AN AGREEMENT OF SOME SORT OR AIDED AND ABETTED SOMEONE TO KILL PHILLIP LEE.

IN THAT CONNECTION LET ME POINT OUT SEVERAL THINGS TO YOU. YOU WILL RECALL THAT DUSHUN STATEN HAD COME TO COLUMBIA AROUND DECEMBER THE 24TH, CHRISTMAS EVE, TO VISIT HIS MOTHER AND HIS BROTHER. HE STAYED SOMETIMES AT HIS BROTHER'S HOUSE, SOMETIMES AT HIS MOTHER'S HOUSE.

NOWHERE HAS THE STATE SHOWN ANY CLOSE RELATIONSHIP BETWEEN DUSHUN STATEN AND THE GUY IN THE BLACK NORTHFACE JACKET AND THE GUY IN THE BLACK AND RED RACING JACKET EXCEPT THAT HE WAS PRESENT WITH THEM IN THE PARKING LOT OF HASKILL DORMITORY WHERE A LOT OF PEOPLE GATHERED, BOTH STUDENTS AND NON-STUDENTS AND THEY HAD SEEN HIM WITH THESE PEOPLE -- OR AT LEAST ONE OF THEM BEFORE. AND FROM THAT THEY MAKE THE GIGANTIC LEAP THAT IF ONE OF THOSE GUYS KILLED PHILLIP LEE AND DUSHUN WAS PRESENT, HE MUST HAVE BEEN INVOLVED IN IT.

NOW, THEY BRING SOME TESTIMONY THAT IS INCONSISTENT. IT BOTHERS ME.

CAN Y'ALL ALL SEE THIS FROM WHERE YOU'RE SITTING? WE HAD A POINTER AROUND HERE A LITTLE EARLIER BUT...

THIS IS STATE'S -- DEFENSE EXHIBIT NUMBER TWO. IT HAD BEEN PUT IN BY THE STATE AS AN I.D. PHOTOGRAPH. AND THE TESTIMONY THAT YOU HEARD ABOUT THIS AREA UP HERE --

AND YOU GOT TO SEE IT IN DAYLIGHT BUT YOU DIDN'T GET TO SEE IT IN DARKNESS.

BUT, YOU KNOW, THERE WAS TESTIMONY THAT THIS AREA RIGHT IN HERE, IN THE CENTER PHOTOGRAPH AT THE TOP, IS THE AREA WHERE DUSHUN WAS, THE CAR WAS, OVER HERE. PHILLIP LEE WAS SHOT SOMEWHERE OVER IN THIS AREA. HE'S OVER HERE. THERE WERE TWO GUYS BETWEEN HIM -- AT LEAST TWO GUYS BETWEEN HIM AND PHILLIP LEE.

LUCIUS TESTIFIED THAT THEY BOTH WERE GOING THIS WAY WHEN THE SHOOTING OCCURS, BOTH BEING HE AND DUSHUN. THAT MEANS THAT THEY WERE IN FACT GOING AWAY FROM THE MURDER SCENE AT THE TIME THAT IT HAPPENED. AND THE FIRST SHOT WENT OFF, THEY TURNED, LOOKED BACK.

DUSHUN SAYS IN HIS STATEMENT THAT MAURICE SANDERS, THE GUY IN THE BLACK AND RED RACING JACKET, HAD A GUN IN HIS HAND. HE FIRED A SECOND SHOT THAT HIT PHILLIP LEE WHO HAD TURNED, ALONG WITH ALL OF THESE OTHER PEOPLE, AND IT HIT PHILLIP LEE IN THE BACK OF THE HEAD, UNFORTUNATELY, AND IT KILLED HIM.

NOW, RASHON LOGGINS, THEIR WITNESS, TESTIFIED THAT WHEN HE CAME DOWN HERE, HE WAS BY PHILLIP LEE AND THAT HE WAS LOOKING ALL AROUND. DUSHUN STATEN, HE SAID, WAS A DISTANCE AWAY WHICH WOULD BE CONSISTENT WITH OVER HERE. HE WASN'T DOING ANYTHING.

NOW, THEN YOU HAVE ANOTHER OF THEIR WITNESSES,

ANTHONY KENNEDY, THE COUSIN OF PHILLIP LEE, I BELIEVE HE SAID, WHATEVER THE WORD COUSIN MEANS TO THEM -- TO HIM, WHO SAID THAT DUSHUN STATEN HAD ON A YELLOW AVERIX JACKET THAT NIGHT AND EVERYONE ELSE HAD ON DARK CLOTHING. REMEMBER THAT. HE SAID IN THAT -- IN THAT GROUP, THE OTHER GROUP.

WELL, THE STATE BRINGS YOU THE PHOTOGRAPH OF MAURICE SANDERS AND YOU WILL SEE -- AND THEY MADE SOME MENTION OF IT, SOME TO-DO ABOUT THIS, THAT HE WAS WEARING A WHITE LONG SLEEVED SHIRT THAT NIGHT. OKAY?

WELL, WE KNOW MAURICE SANDERS WAS CAPTURED THAT NIGHT, TAKEN INTO DETENTION. THE POLICE OFFICER SAID HE HAD A RED BANDANA ON HIS HEAD. REMEMBER THAT?

SO, WHAT HAPPENED TO HIS JACKET, HIS BLACK AND RED RACING JACKET, WHICH ACCORDING TO THEIR OWN WITNESSES HE WAS WEARING? HE HAD TO TAKE IT OFF, DIDN'T HE? HE HAD TO THROW IT AWAY, DIDN'T HE?

THE SAME THING THAT HAPPENED TO THE GUN. HE THREW IT AWAY. AND I KNOW THAT THE LADY POLICE OFFICER TESTIFIED THAT HE DIDN'T GET OUT OF HER SIGHT. THAT'S HER RECOLLECTION TODAY, A YEAR LATER. BUT I SUBMIT TO YOU THAT IT WOULD BE ALMOST IMPOSSIBLE FOR HIM NOT TO GET OUT OF HER SIGHT CONSIDERING HER TESTIMONY AND OTHER TESTIMONY TO THE EFFECT THAT SHE ENCOUNTERED HIM COMING THIS WAY AND THE PURSUIT WENT ALL THE WAY UP HERE TO RICHLAND STREET

WHERE HE WAS APPREHENDED.

ALONG HERE ARE HOUSES, BUNCHES OF HOUSES, AND EVEN UP HERE THEY SAID, AT LEAST OVER HERE OR IT COULD HAVE BEEN OVER ON -- ON THIS SIDE. PLENTY OF HOUSES -- AND THESE ARE OLDER HOUSES IF YOU KNOW THE AREA, UNDER WHICH A PERSON COULD THROW A GUN. EASILY DISPOSED OF.

DON'T RECALL ANY TESTIMONY, AND IF I'M WRONG YOU GO BY WHAT YOU HEARD, NOT BY WHAT I DIDN'T HEAR. BUT I DIDN'T HEAR ANY TESTIMONY THAT THE POLICE CONDUCTED A THOROUGH SEARCH UNDER OR AROUND EACH AND EVERY ONE OF THESE HOUSES.

NOW, THE GUNPOWDER RESIDUE, AN INTERESTING MATTER. I FIND IT INTRIGUING. IN FACT, THEY DID IT ON MAURICE SANDERS AND THEY FOUND THE PRESENCE OF THREE COMPONENTS THAT YOU'RE LOOKING FOR WHEN YOU DO THE TEST TO DETERMINE IF SOMEONE'S FIRED A WEAPON.

WELL, YOU REMEMBER LIEUTENANT POWELL SAID, "WELL, YOU KNOW, IF YOU WASH YOUR HANDS IT'S GONE. IF YOU'RE PRESPIRING AND YOU WIPE YOUR HANDS ON YOUR CLOTHES, IT'S GONE. IF THE GRIP OF THE PISTOL IS WRAPPED UP AND YOU'VE GOT YOUR HANDS ON THE OUTSIDE OF THAT, IT'S NOT GOING TO GET ON YOUR HANDS OR AT LEAST NOT AS MUCH OF IT.

AND HE SAID, YOU KNOW, "WE DO THESE THINGS BY HOW MUCH OF THEM WE FIND. THE ELEMENTS WERE THERE BUT NOT IN SUFFICIENT QUANTITIES THAT WE WOULD SAY OR COULD SAY THAT

HE HAD FIRED A GUN." BUT OF COURSE ALL OF THOSE THINGS ASSUMED THAT HE HAD NOT PERSPIRED, HAD NOT WIPED HIS HANDS AND HAD NOT WRAPPED THE GUN UP BEFORE HE FIRED THE SHOT.

BUT YOU HEARD TESTIMONY -- AND YOU'VE GOT ALL KIND OF CONFLICTING TESTIMONY IN THIS CASE. YOU'VE GOT TESTIMONY THAT IT WAS -- THE GUN WAS WRAPPED UP WITH A BANDANA. AND SO IF YOU BELIEVE THAT, THEN YOU'VE GOT REASON TO DOUBT THE REAL ACCURACY OF THE TEST.

NOW, YOU'VE GOT SOME OTHER INCONSISTENCIES THAT ARE JUST REALLY BOTHERSOME, ESPECIALLY WHEN YOU'RE TRYING TO CONVICT SOMEBODY OF MURDER OR LYNCHING.

PEOPLE WHO CLAIM TO HAVE BEEN THERE THAT NIGHT, ANDREW BRITT, FOR EXAMPLE. HE SAID, "PHILLIP LEE HAD A BLUE BANDANA AROUND HIS HEAD." REMEMBER THAT TESTIMONY? AS A MATTER OF FACT, HE SAT UP THERE AND HE FOLDED THAT BANDANA. HE SAID, "HE ALWAYS FOLDED IT LIKE THIS AND HE ALWAYS WORE IT AROUND HIS HEAD LIKE THIS." OKAY? AND HE SAID, "THAT'S WHAT HE HAD ON THAT NIGHT."

BUT THEN ANTHONY KENNEDY COMES ALONG, AGAIN THEIR WITNESS, AND HE SAYS, "PHIL HAD HIS BLUE BANDANA IN HIS BACK POCKET." SO ONE SAID HE ALWAYS WORE IT ON HIS HEAD AND ONE SAID, NO, HE HAD IN HIS BACK POCKET.

MANNY PERDUE. ONE OF THE MOST INTERESTING WITNESSES I'VE EVER SEEN. MAN CLAIMS TO HAVE BEEN A GOOD FRIEND OF PHILLIP LEE'S. HE'S INTERVIEWED BY INVESTIGATOR KENLEY

THERE. A FINE POLICE OFFICER THAT WAS TRYING TO GET TO THE BOTTOM OF WHAT HAPPENED AT BENEDICT COLLEGE, WHO SHOT AND KILLED PHILLIP LEE.

MANNY PERDUE, STRANGLY ENOUGH -- AND I BELIEVE IT WAS THE DAY AFTER. IT WAS THE 16TH, IF I'M NOT MISTAKEN. DID NOT TELL HIM ANYTHING AT ALL ABOUT HAVING SEEN ANYBODY GET A GUN OUT OF CAR, ANYBODY TELLING SOMEBODY TO GET A GUN OUT OF THE CAR, SHOOTING ANYBODY, WHO IT WAS.

AND I WAS LIKE MR. STRICKLER, SURPRISED BY THAT. SHOCKED IS ACTUALLY A BETTER WORD FOR IT. DANIEL WEBSTER WOULD HAVE SAID SHOCKED, NOT SURPRISED. BECAUSE IT IS SHOCKING INDEED THAT A MAN WOULD CLAIM THAT HE IS GOOD FRIENDS WITH A PERSON WHO HAS BEEN, AS THEY CLAIM, MURDERED AND WOULD NOT TELL THE POLICE WHAT HE KNEW ABOUT IT, HIS GOOD FRIEND. NOT SOME STRANGER, NOT SOMEBODY THAT HE DIDN'T KNOW, NOT SOMEBODY, WHEN HE CONSIDERED THESE THINGS HE MIGHT LIKELY SAY, YOU KNOW, I DON'T WANT TO BE ASSOCIATED WITH THAT. THAT'S -- I DON'T KNOW THAT GUY SO I'M JUST GONNA GET AWAY FROM THIS AS FAR AS I CAN, THE NATURAL HUMAN INSTINCT OF MOST PEOPLE.

THE NATURAL INSTINCT OF MOST PEOPLE WHEN THEY ARE A FRIEND IS YOU ARE GOING TO TELL THE POLICE EVERYTHING THAT YOU KNOW TO HELP THEM FIND WHO MURDERED YOUR FRIEND, ISN'T THAT RIGHT? ISN'T THAT WHAT YOU WOULD DO?

BUT HE DIDN'T. NOT UNTIL A YEAR LATER, WHEN THE

TRIAL IS SET TO BEGIN, HE COMES DOWN HERE AND ALL OF A SUDDEN THAT'S HIS STORY THAT NOBODY HAS EVER KNOWN ANYTHING ABOUT. SO HE NEVER TOLD ANYBODY AS FAR AS WE KNOW. CERTAINLY NOT HERE WITH THE POLICE DEPARTMENT.

NOW, REASONABLE DOUBT. THE JUDGE IS GOING TO TELL YOU -- HE TOLD YOU, I BELIEVE AT THE OPENING OF THE CASE, WHETHER HE DID OR NOT, HE'S CERTAINLY GONNA TELL YOU IN A LITTLE WHILE THAT YOU CANNOT FIND MY CLIENT GUILTY OF ANYTHING UNLESS THE STATE HAD PROVED IT'S CASE BEYOND A REASONABLE DOUBT.

IF YOU HAVE A DOUBT THAT GOES SOMETHING LIKE THIS: WELL MAYBE THESE GUYS GOT JEALOUS AND MADE UP A STORY, A FRIEND OF PHILLIP LEE, ABOUT THIS, THEN YOU WOULD HAVE A REASONABLE DOUBT.

IF YOU SEE INCONSISTENCIES IN THE STORIES OF THEIR WITNESSES THAT JUST CAN'T BE RECONCILED, THEN YOU WOULD HAVE TO HAVE A REASONABLE DOUBT.

THEIR THEORY IS CALLED ACCOMPLICE LIABILITY, SOMETIMES REFERRED TO AS OTHER THINGS BUT THAT'S THE LEGAL NAME FOR IT.

ACCOMPLICE LIABILITY, THAT YOU'RE AN ACCOMPLICE WITH SOMEONE ELSE WHO COMMITTED THE CRIME. BUT YOU'VE GOT TO HAVE CERTAIN THINGS, YOU HAVE TO PROVE CERTAIN THINGS BEYOND ANY REASONABLE DOUBT BEFORE YOU CAN PREVAIL ON THAT THEORY.

AND YOU HAVE TO BE THOROUGHLY CONVINCED, ABSOLUTELY CONVINCED, BEYOND EVERY REASONABLE DOUBT THAT MY CLIENT WAS A PARTICIPANT IN THAT HE WANTED IT DONE, PARTICIPATED IN IT, AIDED IT OR WHATEVER. AND I SUBMIT TO YOU THAT HE DID NOT.

AND I REFER YOU AGAIN TO RASHON LOGGINS WHO SAID HE WAS LOOKING AROUND, HE WAS OBSERVING EVERYTHING, HE SAID, EVEN WHEN HE TURNED TO LEAVE HE WAS STILL LOOKING AROUND OBSERVING EVERYTHING. HE DIDN'T SEE DUSHUN STATEN ANYWHERE EXCEPT AWAY, AWAY FROM WHERE IT HAPPENED. HE SAID, "HE WAS A WAYS BACK FROM WHERE IT HAPPENED."

WELL, BRANDON McCANTS. HE WAS WHAT I CALL EXTRADITED FROM NEW YORK. THAT'S TECHNICALLY NOT CORRECT. BUT THAT'S THE JARGON THAT'S OFTEN USED.

BUT THERE IS A PROCEDURE BY WHICH WITNESSES WHO ARE OUT OF STATE CAN BE COMPELLED TO RETURN TO SOUTH CAROLINA AND OTHER STATES TO TESTIFY IN CRIMINAL CASES. AND HE WAS ORDERED BY THE STATE OF NEW YORK TO COME HERE AND TESTIFY IN THIS CASE. AND HE DID.

HE TOLD YOU, YOU MAY RECALL, THAT HE HAD TRIED TO CALL INVESTIGATOR MEAD ON TWO OCCASIONS, SHORTLY AFTER THIS THING HAPPENED, AFTER DUSHUN AND LUCIUS HAD BEEN ARRESTED, BECAUSE HE KNEW THEY DIDN'T DO ANYTHING. AND HE WANTED TO PASS THAT ON TO MEAD. MEAD DIDN'T RETURN HIS CALLS. HE SAID, "WELL."

BUT THEN -- YOU SEE THE STATE APPOINTS LAWYERS SOMETIMES TO REPRESENT CLIENTS AND THEN WE COME IN A CASE. THAT'S HOW I REPRESENT DUSHUN. AND WE STARTED LOOKING AT THINGS. WE WANT THINGS DONE. WE WANT PEOPLE LOOKED FOR. WE WANT PEOPLE TO TALK TO THE POLICE WHO KNOW WHATEVER THERE IS.

SO HE CALLS MEAD, MAKES A STATEMENT, MEAD TAKES A STATEMENT FROM HIM AND HE TOLD YOU THAT QUITE FRANKLY MEAD'S ATTITUDE WAS VERY COLD LIKE HE DIDN'T WANT TO HEAR WHAT HE HAD TO SAY. HE'D ALREADY MADE UP HIS MIND AND HE WASN'T GONNA CHANGE IT.

BUT THAT'S WHAT YOU'RE FOR. IT'S NOT UP TO HIM TO DECIDE. IT'S UP TO YOU. AND BRANDON McCANTS, HIS TESTIMONY WAS UNEQUIVOCAL THAT THERE WERE TWO GROUPS OF PEOPLE INVOLVED IN THE ARGUING, THE GUY IN THE BLACK NORTHFACE JACKET AND THE GUY IN THE RACING JACKET IN ONE GROUP, AND ABOUT FIFTEEN OTHERS IN THE OTHER GROUP. AND HE SAID DUSHUN STATEN WAS NOT IN THAT GROUP WITH THE TWO. HE WAS AWAY FROM THE SCENE. AND HE TOLD YOU THAT IT JUST WAS NOT TRUE THAT LUCIUS GAVE ANY DIRECTION TO ANYBODY TO SHOOT ANYBODY.

HE WAS SITTING ON THE HOOD OF HIS CAR, FEET AWAY. HE HAS JUST BROUGHT LUCIUS BACK FROM CIRCUIT CITY. SAID DUSHUN DID NOT GO GET ANYTHING OUT OF ANY CAR. AND LUCIUS DIDN'T TELL ANYBODY TO GO GET ANYTHING OUT OF ANY CAR.

THIS GUY WITH THE BLACK -- RED AND BLACK RACING JACKET ONE, WHO WAS STOPPED THAT NIGHT BY THE POLICE, FIRED TWO SHOTS AND PHILLIP LEE AND THE SECOND ONE HIT HIM AND HE SAW IT WITH HIS OWN EYES AND THERE WAS NOT A QUESTION IN HIS MIND ABOUT IT, WHO IT WAS.

LATER McCANTS HAD OCCASION TO HAVE A FACE TO FACE ENCOUNTER, PERSONAL FACE TO FACE ENCOUNTER, WITH THIS SAME GUY IN THE BLACK AND RED RACING JACKET, WHEN HE GOT PICKED UP BECAUSE HE BOUNCED A CHECK. THEY PUT HIM IN THE SAME CELL WITH THIS GUY, MAURICE SANDERS, THE GUY WITH THE GOLD IN THE BOTTOM OF HIS TEETH, THE GUY WHO HAD THE BLACK AND RED RACING JACKET ON WHEN HE DID THE SHOOTING, BUT WHO DIDN'T HAVE IT ON WHEN HE WAS APPREHENDED BY THE POLICE OFFICER.

HE DID NOT ESTABLISH ANY CLOSE RELATIONSHIP BETWEEN DUSHUN AND THESE OTHER TWO GUYS. NOBODY REALLY ESTABLISHED A CLOSE RELATIONSHIP BETWEEN THEM.

NOW, TO RETURN TO THIS THEORY OF ACCOMPLICE LIABILITY. THE LAW HAS CERTAIN SAFEGUARDS IN IT. IT HAS CERTAIN PROVISIONS BY WHICH WE ARE ALL GOVERNED. THEY'VE EVOLVED OVER HUNDREDS AND HUNDREDS OF YEARS AND THEY ALL REALLY EMANATE FROM COMMONSENSE FOR THE MOST PART. THERE IS A LAW THAT SAYS, EVEN IF YOU BELIEVE THAT DUSHUN STATEN WERE INVOLVED IN A PLOT OR A PLAN OR AN ONGOING ACTIVITY TO COMMIT A CRIME, ANY CRIME, IN THIS CASE MURDER, IF HE

HAS WITHDRAWN PRIOR TO THE COMMISSION OF THE ACT, HE CANNOT BE FOUND GUILTY.

I SUBMIT TO YOU THAT THE EVIDENCE IN THIS CASE SUPPORTS NO ACCOMPLICE LIABILITY BUT IT SUPPORTS THAT EVEN IF YOU MAKE THE QUANTUM LEAP AND ASSUME THAT THERE WERE LIABILITY UNDER THE ACCOMPLICE THEORY, THAT DUSHUN THEORY, UNDER THE TESTIMONY IN THIS CASE, HAD WITHDRAWN FROM IT AND CANNOT BE FOUND GUILTY OF IT.

I WANT TO MAKE A FEW OTHER COMMENTS AND THEN I'M GOING TO SIT DOWN. THE SOLICITOR WILL COME UP AND TALK TO YOU. I WANT YOU TO -- I WANT YOU TO THINK ABOUT ALL THE INCONSISTENCIES THAT YOU HEARD FROM THE STATE'S WITNESSES.

AND I WANT YOU TO THINK ABOUT A COUPLE OF OTHER THINGS, ONE OF WHICH MR. STRICKLER MENTIONED AND I FOUND EXTREMELY INTERESTING.

THE SEARCH OF THE DAEWOO SUPPOSEDLY SHOWED UP A MAP TURNED TO FARMING CREEK ROAD. THE MAP, IF IT EVER EXISTED, JUST GOT LOST. IT DIDN'T GET BOOKED INTO EVIDENCE. EVIDENCE MISSING ALL OF A SUDDEN.

THE STATE SAYS, "WELL, LOOK, YOU KNOW, WE'LL JUST GET ANOTHER MAP AND WE'LL JUST TURN IT TO FARMING CREEK ROAD." OKAY? THE PROBLEM IS IT'S NOT THE SAME KIND OF MAP. SOME GUY JUST WENT OUT AND GOT A MAP AND TURNED IT TO FARMING CREEK ROAD.

THIS IS THE KIND OF MAP RIGHT HERE (INDICATING) THAT

WAS IN THE DAEWOO. BUT THIS MAP WASN'T PURCHASED UNTIL THE 17TH OF JANUARY. OKAY? THE SIGNIFICANCE OF THAT? THE GALANT HAD ALREADY BEEN FOUND. THE GALANT WAS FOUND ON THE NIGHT OF THE 16TH.

MR. McNAUGHTON TOLD YOU THAT THEY HAD A RELIGIOUS SERVICE AT HIS PLACE AT 7:00 THAT EVENING ON THE 16TH. THE GALANT WAS NOT THERE. IT ENDED AROUND 9 OR SO. THEY COME OUT, THE GALANT WAS THERE. THESE WITNESSES SAY, "YOU KNOW, THESE GUYS, ALL OF THEM JUMPED IN THIS GREEN GALANT AND TOOK OFF."

NOT SO. SHAKEEM WILSON, WHO IS THE -- ONE OF THE OTHER PEOPLE CHARGED IN THIS CASE WHO'S STILL SITTING IN JAIL, DROVE THE GALANT AWAY. THAT'S WHAT LUCIUS TOLD YOU YESTERDAY. THEY COULDN'T HAVE GOTTEN IN THE CAR IF THEY WANTED TO. IT WAS LOCKED. BUT SHAKEEM WAS TAKING OFF LIKE EVERYBODY ELSE. HE WAS GETTING OUT OF THERE. AND HE GOT OUT OF THERE AND HE PARKED THE CAR, JUST LEFT THE KEYS IN THE IGNITION AND JUST LEFT IT.

WELL, NOW, I SUBMIT TO YOU THAT IT IS ENTIRELY POSSIBLE IN THE AREA WHERE THIS CAR WAS LEFT, SAXON HOMES, THAT SOMEONE ELSE TOOK THE CAR, TOOK IT FOR A JOY RIDE OR WHATEVER, WHO KNOWS. BUT SHAKEEM WILSON DROVE THE CAR. HE WAS THE ONLY ONE WHO DROVE THE CAR AWAY AND WE KNOW THAT BECAUSE GARRETT COPELAND PICKED DUSHUN AND LUCIUS UP. HE IS AN ORDAINED MINISTER. HE HAS NO BONES TO PICK WITH

ANYBODY. HE PUT HIS HAND ON THE BIBLE. HE SWORE TO TELL YOU THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH.

AND HE TOLD YOU HE PICKED THEM UP IN FRONT OF COPPIN DORMITORY ON HARDEN STREET AND CARRIED THEM TO THE EXXON STATION ON ST. ANDREWS ROAD. FROM THERE THEY CALLED CHARISE GLIVENS. SHE PICKED THEM UP, CARRIED THEM OVER TO HER HOUSE, THE PARK APARTMENTS, WHERE THEY STAYED FOR AWHILE. TALIA, IN THE MEANTIME, HAD GOTTEN A CALL FROM SHAKEEM AND GONE AND GOT HIM.

NOW, SOMETIMES YOU JUST CAN'T GET EVERYTHING INTO EVIDENCE BUT SOMETIMES YOU JUST HAVE TO USE YOUR COMMONSENSE. IF HE'S LEFT THE KEYS IN THE CAR AND TALIA'S GONE TO GET SHAKEEM AND SHE'S GOT THE KEYS TO THE HOUSE. THEY CAN'T GET IN THE HOUSE, THEY GOTTA GO SOMEWHERE.

SO THEY WENT SOMEWHERE. THEY WENT TO A FRIEND'S HOUSE. LATISHA DAVIS TOLD YOU THAT THAT NIGHT -- THIS IS THE SWEATER THAT DUSHUN WAS WEARING, NOT THE YELLOW AVERIX JACKET. THE YELLOW AVERIX JACKET ABSOLUTELY, WITHOUT A DOUBT, IS DUSHUN'S. THERE'S NO QUESTION ABOUT THAT.

BUT REMEMBER, HE HAD BEEN SEEN AT HASKILL DORM ON SEVERAL OCCASIONS. THIS IS A BRIGHT COLORED JACKET, ONE YOU'D PROBABLY REMEMBER. A LOT OF PEOPLE WOULD -- I DON'T WANT TO SAY KILL FOR IT BUT THEY WOULD LOVE TO HAVE IT. IT'S SOMETHING THAT YOU WOULD REMEMBER.

IN MAKING UP THE STORIES ABOUT HOW THIS THING

HAPPENED -- BECAUSE THEY WERE PRESENT TOO, YOU UNDERSTAND, AND THEY MAY BE INVOLVED IN THE AGITATION TOO, YOU UNDERSTAND, AND MAY HAVE SOME LEGAL PROBLEMS OF THEIR OWN, YOU UNDERSTAND---

MR. GASSER: I OBJECT TO THAT---

THE COURT: SUSTAINED. SUSTAINED.

MR. TAYLOR: MUST TELL A STORY AND THEY'VE GOT PLENTY OF TIME TO GET TOGETHER AND MAKE UP A STORY.

THE PHOTOGRAPH OF DUSHUN MARKED AS DEFENDANT'S EXHIBIT EIGHT HAS A DATE ON IT, FEBRUARY 11, '99. AND YOU WILL SEE HIS BROWN AVERIX SWEATER.

NOW THEY WANTED YOU TO BELIEVE -- THESE GUYS OUT AT BENEDICT COLLEGE WANTED YOU TO BELIEVE, BECAUSE THEY WERE PRESENT NOW, THAT DUSHUN IS A BLOOD WHO WORE RED ALL THE TIME, WORE RED BANDANAS AND THIS WAS THE SOURCE OF THE ARGUMENTS AND SO ON AND SO ON AND SO ON.

WELL, THERE IS A PHOTOGRAPH OF DUSHUN STATEN, DEFENDANT'S EXHIBIT NUMBER NINE, TAKEN IN THE SEARCH ON JANUARY THE 23RD. THIS PICTURE WAS TAKEN OUT OF THE HOUSE ON THAT DATE. AND I WANT YOU TO PAY PARTICULAR ATTENTION TO THE FACT THAT THE COLOR OF THAT BANDANA ON HIS WRIST IS NOT RED, THAT IT IS BLUE. AND I WANT TO TELL YOU THAT SOME PEOPLE ARE FASHION ORIENTED AND THEY BUY BANDANAS. THEY SELL THEM EVERYWHERE. THEY HAVE BEEN MAKING THEM FOR I DON'T KNOW HOW MANY DECADES BECAUSE PEOPLE WEAR THEM AS

APPAREL TO COMPLIMENT THEIR OTHER CLOTHES. SOME PEOPLE ARE MORE FLASHY DRESSERS THAN OTHERS.

COME ON, LADIES AND GENTLEMEN, WHERE IS THE REAL PROOF? THE REAL PROOF IS THIS, THE REAL PROOF IS THAT MAURICE SANDERS SHOT AND KILLED PHILLIP LEE. AND HE IS IN JAIL NOW, RIGHT NOW, WITH WITNESSES, EYEWITNESSES, WHO WILL SAY HE SHOT AND KILLED PHILLIP LEE. HE'S NOT HERE IN THIS COURTROOM BEING TRIED FOR IT. HE'S CHARGED WITH ACCESSORY AFTER THE FACT EVEN THOUGH HE ESCAPED, LEFT THE STATE OF SOUTH CAROLINA IMMEDIATELY. WENT TO JACKSONVILLE, FLORIDA RIGHT AFTERWARDS THEN CAME BACK.

THE PROBLEM IS THIS, BY THE TIME HE CAME BACK, YOU SEE, OFFICER MEAD HAD ALREADY MADE UP HIS MIND. SO HERE WE ARE.

THE REST OF THIS YOUNG MAN'S LIFE, RIGHT HERE, RIDES UPON YOUR SWORN OATH TO DO THE TRUTH, VEREDICTO, THE LATIN WORD MEANS VERDICT. IN LATIN IT MEANS TO SPEAK THE TRUTH AND IT MEANS TO SPEAK THE TRUTH BEYOND ALL REASONABLE DOUBT.

IF THERE'S A DOUBT, THE DOUBT GOES TO THE DEFENDANT BECAUSE WE DON'T CONVICT INNOCENT PEOPLE ON ANYTHING LESS THAN THAT. THAT'S WHAT MAKES AMERICA THE GREATEST COUNTRY IN THE WORLD.

I WANT TO THANK ALL OF YOU FOR YOUR KIND ATTENTION AND YOUR PATIENCE. I'VE NOTICED EACH OF YOU ALL WEEK LONG

PAYING A LOT OF ATTENTION AND WE APPRECIATE THAT.

THANK YOU.

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE'RE GONNA TAKE ONE MORE FIVE MINUTE BREAK SO WE CAN ORDER YOUR LUNCH AND THEN WE'LL COME IN AND HAVE MR. GASSER AND THEN I'LL TELL YOU WHAT THE LAW IS AND THEN YOU'LL HAVE THE CASE. AND WHILE YOU'RE DELIBERATING YOUR LUNCH WILL BE DELIVERED.

SO IF YOU'LL GO TO YOUR JURY ROOM FOR ABOUT FIVE MINUTES, WE'LL COME BACK OUT AND FINISH UP.

(JURY OUT AT 12:15 P.M.)

THE COURT: ALL RIGHT. LET'S TAKE ABOUT FIVE MINUTES.

(COURT IS IN RECESS.)

THE BAILIFF: COURT COME TO ORDER. ALL RISE, PLEASE.

THE COURT: THANK YOU. PLEASE BE SEATED.

SOMEBODY NEEDS TO GO OUT THERE AND TELL PEOPLE IN THE HALL IF THEY INTEND TO COME BACK IN THEY NEED TO COME BACK IN NOW.

MR. GASSER: BEG THE COURT'S INDULGENCE FOR A MOMENT.

THE COURT: OKAY.

(PAUSE.)

THE COURT: ALL RIGHT, MR. GASSER, YOU READY TO

BEGIN?

MR. GASSER: THE STATE'S READY.

THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE, SIR.

(JURY IN AT 12:25 P.M.)

THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT, MR. GASSER.

MR. GASSER: MAY IT PLEASE THE COURT, YOUR HONOR.

CLOSING ARGUMENT ON BEHALF OF THE STATE BY MR. GASSER:

MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, I TOO WOULD LIKE TO THANK EACH AND EVERY ONE OF YOU FOR YOUR SERVICE THIS WEEK. AS MR. HOOD INDICATED, ALL OF THE LAWYERS HAVE HAD AN OPPORTUNITY, WHEN WE'RE NOT ASKING QUESTIONS OF THE WITNESSES, TO OBVIOUSLY SIT AT OUR TABLES AND TO OBSERVE THE JURY INTERACTING SILENTLY WITH THE PROCESS. AND EACH AND EVERY ONE OF YOU HAVE DEMONSTRATED A RESPONSIBILITY OF PAYING ATTENTION.

AND YOU WONDER WHY -- I WONDER IF THE LAWYERS SAY THAT ALL THE TIME? I CAN TELL YOU RIGHT NOW, LAWYERS DON'T SAY THAT ALL THE TIME. YOU'D BE AMAZED AT HOW OFTEN YOU PICK A JURY AND SOME MEMBERS OF THE JURY DO NOT TAKE THEIR DUTY AS SERIOUSLY AS YOU FIFTEEN JURORS, ALL FIFTEEN OF YOU, HAVE TAKEN YOUR DUTY. AND ON BEHALF OF THE STATE OF SOUTH CAROLINA, I THANK EACH AND EVERY ONE OF YOU FOR THAT.

I'VE ALSO NOTICED THAT OVER THE LAST ALMOST TWO HOURS YOU HAVE GIVEN THE THREE LAWYERS THAT HAVE SPOKEN BEFORE YOU THE RESPECT OF LISTENING. AND I RESPECT THAT AS WELL. I'M GLAD YOU LISTENED TO ALL THREE OF THOSE LAWYERS AND I KNOW YOU'VE -- YOU'VE BEEN SITTING THERE FOR TWO HOURS AND I JUST SIMPLY ASK YOU TO PLEASE BEAR WITH ME AS I GO OVER THE EVIDENCE WITH YOU.

THE BURDEN OF PROOF IS ON THE STATE OF SOUTH CAROLINA. LUCIUS STATEN AND DUSHUN STATEN HAVE NO BURDEN. AND EACH AND EVERY ONE OF YOU KNEW THAT BEFORE YOU CAME INTO THIS COURTROOM. BUT IT'S BEEN TOLD TO YOU OVER AND OVER AGAIN.

AND BECAUSE THE BURDEN OF PROOF LIES WITH THE STATE OF SOUTH CAROLINA, THE STATE GETS TO GO LAST. AND IN A CASE LIKE THIS WHERE THERE'S BEEN TWO DEFENDANTS AND WHEN YOU'VE SAT THERE ALL WEEK FOR BASICALLY THREE FULL DAYS AND LISTENED TO TESTIMONY AND THEN LISTEN TO THREE LAWYERS, I KNOW YOU'RE ITCHING TO GET STARTED ON YOUR DELIBERATIONS. BUT I JUST ASK YOU TO BEAR WITH ME FOR A MOMENT AS I GO OVER THE EVIDENCE WITH YOU.

YOU KNOW, MR. HOOD WAS CORRECT WHEN HE INDICATED TO YOU THAT OF THE FOUR ELEMENTS OF MURDER AND OF THE FOUR ELEMENTS OF LYNCHING IN THE FIRST DEGREE, THREE OF THE ELEMENTS IN EACH OF THOSE OFFENSES ARE UNCONTRADICTED. THE DEFENSE LAWYERS DIDN'T EVEN CHALLENGE THAT.

THERE'S NO QUESTION THE DEFENDANTS WERE PRESENT AT THE SCENE WITH REGARD TO MURDER. AND THE QUESTION WITH REGARD TO MURDER IS WHETHER OR NOT LUCIUS STATEN AND DUSHUN STATEN WERE AIDING AND ABETTING. THAT'S THE ISSUE.

THE SHOOTER CLEARLY HAD MALICE. EACH AND EVERY ONE OF YOU KNOW WHEN A HUMAN BEING TAKES A GUN, NOT ACTING IN SELF-DEFENSE AND FIRES IT INTO THE BACK OF THE HEAD OF ANOTHER HUMAN BEING, CAN YOU GET A MORE MALICIOUS ACT. SO CLEARLY THE SHOOTER HAD MALICE. AND, OF COURSE, PHILLIP LEE DIED OF THE GUNSHOT WOUND.

SO THE ISSUE WITH THE MURDER IS, WITH REGARDS TO LUCIUS STATEN, DOES THE EVIDENCE INDICATE THAT HE WAS ACTING AS AN AIDER AND ABETTER.

WITH REGARD TO DUSHUN STATEN, DOES THE EVIDENCE INDICATE THAT HE WAS ACTING AS AN AIDER AND ABETTER.

WITH REGARD TO THE LYNCHING, AGAIN OF THE FOUR ELEMENTS, CLEARLY THEY WERE PRESENT AT THE SCENE AND CLEARLY THEY WERE -- THE TWO OF THEM WERE -- THE MOB IS DEFINED AS TWO OR MORE PEOPLE. SO CLEARLY THE EVIDENCE IS UNCONTRADICTED THAT THERE ARE AT LEAST TWO OR MORE PEOPLE.

THE THIRD ELEMENT IS THAT THERE WAS AN INTENT TO COMMIT SOME INJURY TO A PERSON, NOT NECESSARILY DEATH, BUT SOME PHYSICAL INJURY TO SOMEBODY. AND THE FOURTH ELEMENT IS THAT DEATH RESULTD. AND CLEARLY THAT'S UNCONTRADICTED.

SO WHEN YOU'RE BACK THERE DELIBERATING, THE ISSUE --

THE ISSUES THAT YOU HAVE TO RESOLVE WITH REGARD TO THE MURDER IS WERE THEY ACTING AS AIDERS AND ABETTERS. WITH REGARD TO THE LYNCHING IS AT SOME TIME WHILE THEY WERE THERE WITH THEIR FRIENDS, THAT SOME -- THAT ANYONE OF THEM FORMED THE INTENT, ANY ONE OF THEM, TO CAUSE PHYSICAL INJURY TO SOMEONE.

NOW, LADIES AND GENTLEMEN, AGAIN AS MR. HOOD INDICATED TO YOU AND THIS IS VERY IMPORTANT, EACH DEFENDANT -- YOU ARE TO ANALYZE THE EVIDENCE AND TESTIMONY AGAINST EACH DEFENDANT SEPARATELY.

I'M NOT GOING TO INSULT YOUR INTELLIGENCE BY TELLING YOU WITH REGARD TO THE MURDER CHARGE THAT THE EVIDENCE THAT WE HAVE INTRODUCED AGAINST LUCIUS STATEN IS AS STRONG AS THE EVIDENCE THAT YOU'VE SEEN AGAINST DUSHUN. THAT WOULD BE INSULTING YOUR INTELLIGENCE.

CLEARLY -- YOU SAT HERE FOR THREE DAYS AND SAW THE EVIDENCE PILE UP AGAINST DUSHUN STATEN IN HIS ROLE AND THE PRIOR THREAT WITH THE WAVING OF THE GUN AT PHILLIP LEE. AND THE OBVIOUS -- YOU'VE BEEN OUT TO THAT SCENE. THE EVIDENCE AGAINST DUSHUN STATEN AS AN AIDER AND ABETTER WITH THAT GUN, IS CLEARLY MUCH STRONGER THAN LUCIUS STATEN. I WOULD BE INSULTING YOUR INTELLIGENCE IF I TOLD YOU THE EVIDENCE WAS EQUAL WHEN IT CAME TO MURDER.

AND IT CLEARLY IS -- THE STATE HAS INTRODUCED MORE EVIDENCE AGAINST DUSHUN STATEN PROVING HIS GUILT AS AN

AIDER AND ABETTER THAN WE HAVE AGAINST LUCIUS STATEN.

THAT DOES NOT MEAN THAT LUCIUS STATEN'S NOT GUILTY AND I WILL TALK TO YOU ABOUT THAT. AND IT CLEARLY DOESN'T MEAN, WITH REGARDS TO THE LYNCHING, BECAUSE TO CONVICT BOTH OF THESE DEFENDANTS OF LYNCHING -- THE ELEMENTS OF MURDER REQUIRES MUCH MORE EVIDENCE THAN THAT OF LYNCHING. BUT IT'S CLEARLY, CLEARLY, THE EVIDENCE AGAINST DUSHUN STATEN IS MUCH STRONGER WITH REGARDS TO MURDER THAN THAT OF LUCIUS.

NOW, LADIES AND GENTLEMEN, BASICALLY WHAT THIS CASE BOILS DOWN TO, I SUBMIT TO YOU, IS YOU HAD SIX EYEWITNESSES. YOUR -- YOUR ROLE IN ABOUT FORTY-FIVE MINUTES WHEN YOU BEGIN YOUR DELIBERATIONS, THIRTY TO FORTY-FIVE MINUTES, YOUR ROLE IS GONNA BE, WHAT HAPPENED ON -- WHAT HAPPENED ON JANUARY THE 15TH, 2001 AT THE PARKING LOT OF THE HASKILL DORMITORY ON BENEDICT COLLEGE TO WHICH ALL FIFTEEN OF YOU HAVE BEEN AND SEEN WITH YOUR OWN EYES. THAT'S YOUR ROLE. WHAT HAPPENED? WHAT EVIDENCE WAS BROUGHT TO US TO DETERMINE THE CONDUCT AND THE ACTIONS OF DUSHUN STATEN AND THE CONDUCT AND THE ACTIONS OF LUCIUS.

AND WHEN THE JUDGE GIVES YOU -- GIVES YOU THE LAW, YOU'RE GONNA TAKE THE EVIDENCE, THE EVIDENCE THAT YOU'VE SEEN WITH REGARDS TO THE ACTIONS AND CONDUCT OF DUSHUN, AND SEPARATELY THE EVIDENCE THAT YOU'VE SEEN WITH REGARDS

TO ACTIONS AND CONDUCT OF LUCIUS, AND THEN YOU'RE GONNA APPLY THAT LAW IN DETERMINING WHETHER THEY'RE GUILTY OR NOT GUILTY OF MURDER AND GUILTY OR NOT GUILTY OF LYHCINGS.

BUT REALLY WHAT IT BOILS DOWN TO, YOU'VE HEARD FROM SIX EYEWITNESSES, SIX EYEWITNESSES TO WHAT HAPPENED IN THE MOMENTS BEFORE PHILLIP LEE WAS KILLED AND RIGHT WHEN HE WAS SHOT. YOU'VE HEARD FROM THREE EYEWITNESSES FROM THE STATE, RASHON LOGGINS, TONY KENNEDY AND MANNY PERDUE. AND YOU'VE HEARD FROM TWO EYEWITNESSES FROM THE WITNESS STAND, BRANDON McCANTS, LUCIUS STATEN AND YOU'VE HEARD DUSHUN STATEN'S WORDS AS TO WHAT HAPPENED IN THE INTRODUCTION OF HIS STATEMENT AND THE ORAL -- ORAL PRESENTATION FROM INVESTIGATOR MEAD. SO YOU IN ESSENCE HAVE HIS VERSION AS WELL WHICH IS CONSISTENT WITH THE TWO.

SO WHAT YOU HAVE, LADIES AND GENTLEMEN, I SUBMIT TO YOU, IS YOU'VE GOT THREE -- THESE THREE EYEWITNESSES AS TO WHAT HAPPENED AND YOU'VE GOT THESE THREE EYEWITNESSES AS TO WHAT HAPPENED.

NOW, LADIES AND GENTLEMEN, IF YOU BELIEVE THESE THREE WITNESSES, YOU'RE GONNA CONVICT BOTH THE DEFENDANTS OF MURDER AND LYNCHING. IF YOU BELIEVE THESE THREE WITNESSES, YOU'RE GONNA FIND BOTH THE DEFENDANTS NOT GUILTY.

SO YOUR ROLE IS, WHAT DO WE DO? HOW DO WE DETERMINE AS JURORS -- BOTH INDIVIDUALLY AND COLLECTIVELY, HOW DO WE

DETERMINE WHICH VERSION IS THE CREDIBLE VERSION? WHICH VERSION IS THE BELIEVABLE VERSION.

WELL, THE JUDGE WILL GIVE YOU A NUMBER OF FACTORS. ONE OF THE MOST IMPORTANT FACTORS IS YOU'RE GONNA HAVE TO DETERMINE THE CREDIBILITY OF EACH WITNESS. ANOTHER IMPORTANT FACTOR IS -- AND CRITICAL TO THIS CASE IS WHAT EACH WITNESS INDIVIDUALLY AND THESE THREE WITNESSES -- IS WHAT THESE THREE WITNESSES, HAS WHAT THEY TOLD US BEEN CORROBORATED, BEEN SUPPORTED BY OTHER EVIDENCE?

YOU SEE, ALL THE OTHER WITNESSES THAT WERE CALLED, ALL THE OTHER STATE'S WITNESSES, ALL THE OTHER DEFENSE' WITNESSES WERE CALLED FOR A REASON. IT WAS TO OFFER SOME SORT OF CORROBORATION, SOME SORT OF SUPPORT OR SOME SORT OF CONTRADICTION TO THESE SIX EYEWITNESSES. BUT YOU ONLY GOT SIX EYEWITNESSES. YOU ONLY HAVE SIX PEOPLE'S VERSIONS AS TO WHAT HAPPENED, THREE FOR THE STATE, THREE FOR THE DEFENSE.

AND SO YOUR DETERMINATION WILL BE, WHAT IS -- WHAT TOOLS CAN WE USE TO DETERMINE WHETHER THE STATE'S VERSION OF EVENTS IS CORRECT AND THEREFORE BOTH ARE GUILTY, BOTH DEFENDANTS OF MURDER AND LYNCHING. BECAUSE YOU CAN'T BELIEVE THESE THREE PEOPLE. IF YOU BELIEVE THESE THREE PEOPLE -- YOU'VE SWORN AN OATH TO APPLY THE LAW. BECAUSE IF YOU BELIEVE IT OCCURRED THE WAY THESE THREE INDIVIDUALS BELIEVE IT DID, THEN THEY'RE GUILTY OF MURDER AND LYCHING.

IF YOU DON'T BELIEVE THESE THREE PEOPLE, IT'S BECAUSE YOU BELIEVE THESE THREE PEOPLE. I MEAN, THERE'S TWO VERSIONS. IT REALLY IS AN EITHER/OR. THE VERSIONS OF THESE THREE PEOPLE AND THE VERSIONS OF THESE THREE PEOPLE ARE LITERALLY DIAMETRICALLY OPPOSED. THEY ARE ONE HUNDRED AND EIGHTY DEGREES DIFFERENT.

NOW, THE BURDEN OF PROOF ALWAYS REMAINS WITH THE STATE. THE BURDEN IS ON THE STATE. AND SO THE STATE SUBMITS TO YOU THAT WE CARRIED OUR BURDEN IF YOU BELIEVE THESE THREE WITNESSES.

SO YOU LOOK FOR CORROBORATION. YOU LOOK TO JUDGE THE CREDIBILITY OF THESE WITNESSES AND THE CREDIBILITY OF THESE WITNESSES. AND A WAY TO JUDGE THEIR CREDIBILITY ISN'T SIMPLY LOOKING AT THEIR DEMEANOR. BUT IS WHAT THEY TOLD ME, IS WHAT THAT WITNESS HAS SAID, IS IT CORROBORATED, SUPPORTED BY OTHER EVIDENCE OR IS IT CONTRADICTED?

AND THE GREATEST TOOL YOU HAVE, THE GREATEST TOOL YOU HAVE TO TEST THE CREDIBILITY AND TO TEST THE CORROBORATION IS YOUR COMMONSENSE.

I'M GONNA TALK TO YOU ABOUT THE STATE'S CASE, THE STATE'S CASE, THE STATE'S THREE EYEWITNESSES. AND I'M GONNA GO THROUGH EACH OF WHAT THEY TESTIFIED TO WITH SOME OF THE EVIDENCE. AND THEN I'M GONNA TELL YOU HOW THEIR TESTIMONY HAS BEEN CORROBORATED AND WHY THEY ARE CREDIBLE.

THEN I'M GONNA DISCUSS WITH YOU THE DEFENSE THEORY. AND THEIR DEFENSE IS SIMPLY THIS, BOTH DEFENSES IS WHAT IS KNOWN IN THE LAW AS MERE PRESENCE. AND THE JUDGE IS GONNA CHARGE YOU. IT'S NOT A WHO-DONE-IT. WE'RE NOT CLAIMING THEY WEREN'T THERE. IT'S NOT AN INSANITY DEFENSE. IT'S NOT A SELF-DEFENSE. THOSE ARE THE THREE OTHER DEFENSES IN A HOMICIDE CASE. INSANITY, IT'S NOT. I WASN'T EVEN THERE, I WAS SOMEWHERE ELSE, ALIBI AND SELF-DEFENSE.

THE ONLY OTHER DEFENSE IS MERE PRESENCE. AND THAT'S WHAT BOTH THEIR DEFENSES ARE. SO I'M GONNA TALK TO YOU ABOUT THEIR VERSION OF EVENTS AND THE CREDIBILITY OF THEIR WITNESSES AND THEN I'M GOING TO HAVE A FEW CONCLUDING REMARKS AND I WILL BE FINISHED. I JUST WANTED TO GIVE YOU AN OUTLINE OF THE FOUR AREAS I'M GONNA DISCUSS WITH YOU PRIOR TO MY PRESENTATION.

THE STATE'S WITNESSES. RASHON LOGGINS. RASHON LOGGINS TESTIFIES THAT HE GOT BACK TO SCHOOL SOME TIME AROUND THE 8TH OF JANUARY, THE BEGINNING OF THAT WEEK BEFORE AND HE INDICATES THAT HE IMMEDIATELY RECOGNIZED LUCIUS STATEN AND DUSHUN STATEN AND SOME OTHER PEOPLE HANGING OUT AT THE UPPER PART OF THE PARKING LOT AREA. HE HAD NOT SEEN THEM BEFORE. HE RECOGNIZED THAT THEY WEREN'T STUDENTS. AND HE SAW THEM THERE JUST ABOUT EVERY DAY, SOMETIMES DURING THE DAY, SOMETIMES AT NIGHT.

AND RASHON LOGGINS TOLD TO YOU -- TOLD YOU ABOUT AN

INCIDENT, AN ALTERCATION THAT FRIDAY NIGHT, AN ALTERCATION INVOLVING THE VICTIM, PHILLIP LEE, AND THE DEFENDANTS, DUSHUN STATEN AND LUCIUS STATEN, BOTH DEFENDANTS. OKAY?

RASHON LOGGINS TALKED TO YOU ABOUT BOTH DEFENDANTS. LUCIUS WAS INVOLVED IN THE ARGUMENT AND RASHON (SIC) -- AND DUSHUN WAS INVOLVED IN THE ARGUMENT. NOW WHY IS THAT? ALL THAT INFORMATION IS JUST TO SHOW YOU -- IS SO THAT YOU JURORS CAN UNDERSTAND AS TO WHY SOMETHING LIKE THIS COULD HAPPEN.

YOU'RE PROBABLY WONDERING WAS THERE SOMETHING THAT HAD HAPPENED BEFORE? WHERE WAS THE ANIMOSITY GROWING? WAS THERE SOME BAD BLOOD? AND THAT'S WHY THAT EVIDENCE WAS PRESENTED TO YOU, SO THAT YOU AS REASONABLE PEOPLE, YOU'RE PROBABLY WONDERING, YOU KNOW, WHAT IS IT THAT DEVELOPED TO SUCH A STAGE WHERE A TWENTY YEAR OLD MAN GOT KILLED? SO THERE WAS SOME ANIMOSITY AND RASHON LOGGINS TALKED ABOUT THAT.

NOW, LADIES AND GENTLEMEN, ALL WE BROUGHT FORWARD TO YOU IS THAT THEY WERE WEARING READ, THAT DUSHUN WAS WEARING RED. THE WITNESSES SAID THAT HE WAS WEARING RED. NOT LUCIUS. NOT ONE WITNESS TESTIFIED THAT LUCIUS WAS WEARING RED BUT THAT DUSHUN WAS WEARING RED. AND THE REASON WHY THAT WAS BROUGHT TO YOU IS BECAUSE THEY TESTIFIED THAT'S HOW THE ARGUMENT STARTED.

THE VICTIM WAS WEARING A BLUE BANDANA. DOES THAT

MEAN ANYTHING? DOES THAT IN AND OF ITSELF MEAN ANYTHING? I DON'T KNOW. BUT THE FACT OF THE MATTER IS, LADIES AND GENTLEMEN, WHEN THERE'S EVIDENCE FOR WHAT CAUSED AN ARGUMENT, WE'RE NOT GONNA KEEP THAT FROM YOU.

PEOPLE ARGUE OR GET IN -- OR GET IN DISPUTES OVER THINGS THAT YOU AND I MIGHT NOT GET INTO DISPUTES. ONE PERSON MIGHT GET IN A DISPUTE OVER WHO'S THE BEST QUARTERBACK IN THE NFL. SOME OTHER PEOPLE WOULD NEVER GET IN A DISPUTE OVER THAT. YOU'D BE AMAZED AT THE NUMBER OF PEOPLE THAT HAVE BEEN KILLED OVER RIDICULOUS DISPUTES.

WE BROUGHT FORWARD TO YOU THE FACT -- WE CAN'T CHANGE THE FACT THAT THE WITNESSES, INCLUDING THEIR OWN FRIEND, IF YOU REMEMBER, BRANDON McCANTS -- WHEN I WAS READING FROM THE FRONT PAGE OF HIS STATEMENT, IF YOU REMEMBER, THEIR OWN FRIEND, BRANDON McCANTS, WITNESSED THAT AND SAID DUSHUN, WHO WAS WEARING RED WHO CLAIMED TO BE A MEMBER OF THE BLOODS. I MEAN, THAT WAS THEIR FRIEND THAT WROTE THAT IN HIS STATEMENT.

NOW, DOES THAT MEAN ANYTHING? WE'RE SIMPLY---

MR. TAYLOR: OBJECTION, YOUR HONOR. MISCHARACTERIZATION OF TESTIMONY. HE DIDN'T SAY HE WAS WEARING RED.

THE COURT: WELL, THE JURY HEARD THE TESTIMONY. THEY GONNA HAVE TO DECIDE WHAT THE TESTIMONY WAS IN THEIR DELIBERATIONS.

MR. GASSER: HE DIDN'T SAY HE WAS WEARING A RED BANDANA. HE SAID HE WAS WEARING RED CLOTHES.

BUT THE POINT I'M TRYING TO MAKE IS WE JUST BROUGHT FORWARD TO YOU THE EVIDENCE AS TO WHY THERE WAS SOME SORT OF ALTERCATION BETWEEN PHILLIP LEE AND THE OTHER BENEDICT COLLEGE STUDENTS OUT THERE AS WELL -- WITH THE DEFENDANTS, DUSHUN AND LUCIUS. AND THAT'S WHAT THE EVIDENCE WAS.

THAT TESTIMONY WAS FROM RASHON AND EYEWITNESSES YOU SAW UP THERE INCLUDING BRANDON McCANTS, THAT ON FRIDAY NIGHT -- ON FRIDAY NIGHT RASHON, ACCORDING TO THE STATE'S WITNESSES, WAS WEARING RED BANDANAS. PHILLIP WEARS A BLUE BANDANA AND WORDS WERE EXCHANGED AND LUCIUS JUMPED IN. THAT'S WHAT RASHON SAYS AND BRANDON McCANTS EVEN SUPPORTS THE FACT THAT THERE WAS AN ALTERCATION.

WHAT ELSE DOES RASHON SAY? RASHON SAYS THAT ON MONDAY -- ON MONDAY, JANUARY THE 15TH, HE WAS HANGING ON HERE. HE WAS HANGING OUT IN THIS AREA. OKAY?

AND THEN HE SAW -- HE HEARD A DISTURBANCE UP HERE BY THE LIGHT POLE. NOW ALL OF Y'ALL HAVE BEEN OUT THERE NOW. SO YOU NOW KNOW WHAT WE'RE TALKING ABOUT. HE SAW THE DISTURBANCE UP HERE. AND THIS REALLY ISN'T A GREAT DISTANCE. IT LOOKS LIKE A GREAT DISTANCE ON THIS DIAGRAM. THAT'S THE REASON WHY WE WANTED YOU TO GO OUT TO THE CRIME SCENE. IT REALLY ISN'T THAT GREAT OF A DISTANCE BETWEEN THE END OF THIS BUILDING AND WHERE THAT LIGHT POLE IS.

BUT HE WAS DOWN THERE HANGING OUT ALONG WITH A BUNCH OF STUDENTS. THAT'S WHAT STUDENT AND COLLEGE LIFE IS ABOUT, IS HANGING OUT WITH YOUR FRIENDS.

HE SAW A DISTURBANCE AND HE WALKED ON UP HERE. AND WHAT DID HE TELL YOU? SEE, BY THE TIME HE GOT UP THERE, LUCIUS HAD ALREADY ARRIVED. THE STATE CONCURS THAT LUCIUS WAS THERE BEFORE AND LEFT WITH BRANDON McCANTS AND WENT TO CIRCUIT CITY. NOBODY EVER DISPUTED THAT AND THAT HE CAME BACK. THAT'S NOT AN ISSUE. NOBODY EVERY DISPUTED THAT FACT. HE WAS THERE. HE LEFT. AND HE CAME BACK.

EVERYBODY AGREES THAT WHEN THE INITIAL ARGUMENT STARTED BETWEEN DUSHUN AND PHILLIP, THAT LUCIUS WASN'T THERE. THAT HE ARRIVED LATER. NOBODY DISPUTES THAT.

AND BY THE TIME RASHON CAME UP THERE, LUCIUS WAS ALREADY ON THE SCENE. RASHON TELLS YOU THAT LUCIUS WAS ARGUING WAS PHILLIP. IN FACT, RASHON TELLS YOU BY THE TIME HE GETS UP THERE, IT WAS LUCIUS AND THE GUY IN THE BLACK NORTHFACE JACKET. THAT'S WHAT RASHON SAYS. BY THE TIME HE GOT UP THERE IT WAS LUCIUS AND THE GUY IN THE BLACK NORTHFACE JACKET AND THEY WERE ARGUING HARD -- ARGUING HARD WITH PHILLIP.

AND THEN HE TURNS -- REMEMBER WHAT HE SAYS? HE SAYS HE HEARS THE VICTIM SAY, "Y'ALL KILL ME -- AH, Y'ALL KILL ME." AND THEN HE HEARS FROM SOMEBODY -- HE'S NOT SURE BUT IT WAS SOMEBODY FROM OUT OF THAT GROUP. AND HE INDICATED

TO YOU THAT THERE WERE FIVE OR SIX PEOPLE UP HERE. FIVE OR SIX PEOPLE UP HERE ARGUING WITH PHILLIP WHICH IS CONSISTENT WITH WHAT ALL THE OTHER WITNESSES HAVE SAID. CONSISTENT.

WE'VE GOT FIVE PEOPLE CHARGED. FOUR WERE IN CUSTODY.

ONE, I BELIEVE SOMEBODY SAID HIS NAME WAS KAREEM, HIS LAST NAME HAS NEVER EVEN BEEN -- NO ONE EVEN KNOWS WHAT HIS LAST NAME IS.

BUT HE SAW FIVE OR SIX PEOPLE AROUND HERE AND HE HEARD ONE OF THEM -- HE HEARD LUCIUS AND THE GUY IN THE BLACK NORTHFACE ARGUING HARD. AND WHEN THE VICTIM PHILLIP LEE TURNED TO SAY, "MAN, Y'ALL KILL ME." HE HEARS ONE OF THEM SAY, "YEAH, WE'LL KILL YOU."

THAT WAS RASHON LOGGINS' TESTIMONY. HE DOESN'T SEE WHO DID THE SHOOTING. HE DOESN'T HEAR ANYTHING ELSE. I'LL GET TO THAT IN A MOMENT. BUT THAT IN ESSENCE IS RASHON LOGGINS' TESTIMONY.

TONY KENNEDY. WHAT DOES TONY KENNEDY TELL YOU? TONY KENNEDY, I SUBMIT TO YOU, WAS THE MOST CREDIBLE WITNESS THAT YOU HEARD IN THREE DAYS OF TESTIMONY. THE MOST AND YOU'RE GONNA HAVE TO BE THE JUDGES OF THAT. BUT THINK ABOUT ALL OF THE LAY WITNESSES. WHEN I'M TALKING ABOUT THE LAY WITNESSES, NOT THE LAW ENFORCEMENT OFFICERS, NOT THE FORENSICE OR MEDICAL PEOPLE, OF THE CITIZENS THAT

CAME BEFORE YOU.

WHAT DID TONY KENNEDY HAVE TO SAY? TONY KENNEDY TOLD YOU THAT HE GOT BACK ON THE 8TH. HE TOLD YOU THAT HE SAW -- HE FIRST SAW RASHON -- I MEAN, DUSHUN AND LUCIUS HANGING UP HERE IN THE PARKING LOT. HE SAW THAT ON THE AFTERNOON AND THE EVENINGS OF THE 8TH AND THE 9TH AND THE 10TH.

AND WHY IS THAT IMPORTANT? WE JUST CAN'T ASSUME AN ELEMENT IN THE CASE, LADIES AND GENTLEMEN. WE CAN'T JUST ASSUME THAT THE DEFENSE IS GOING TO BE MERE PRESENCE. WE HAVE TO PROVE THE ELEMENTS EVEN IF THEY'RE STIPULATED TO OF A CRIME. SO WE PUT ALL THAT EVIDENCE IN SO YOU WILL BE ABSOLUTELY POSITIVE THAT IDENTIFICATION WAS NOT AN ISSUE IN THIS CASE WITH REGARDS TO THEM KNOWING THE FACES OF LUCIUS AND DUSHUN. WE HAD A DUTY TO DO THAT. THE LAW REQUIRES US TO DO THAT.

BUT HE TALKED TO YOU ABOUT SEEING THEM IN THIS PARKING LOT ALMOST EVERY DAY FOR A FULL WEEK. HE SAW THEM THERE. THEY WERE NORMALLY HANGING TOGETHER. AND HE WAS PRESENT ON THAT INCIDENT ON FRIDAY NIGHT. AND HE TELLS YOU ABOUT THE SAME THING THAT RASHON DOES, THAT THE ARGUMENT STARTED BETWEEN DUSHUN AND PHILLIP LEE. THAT'S EXACTLY WHAT RASHON LOGGINS SAID, THE ARGUMENT STARTED BETWEEN DUSHUN AND PHILLIP LEE. THAT'S EXACTLY WHAT BRANDON McCANTS SAYS.

AND THAT LUCIUS JUMPS IN. BIG BROTHER, THAT LUCIUS JUMPS IN. BUT THERE WAS AN ARGUMENT. THERE WAS BAD BLOOD. IT BROKE UP. SERGEANT BOYD TOLD YOU THAT. IT BROKE UP BUT THE WHOLE POINT OF THAT TESTIMONY IS TO SHOW THAT THERE WAS SOME ANIMOSITY THAT WAS BREWING, THAT WAS BREWING ON THE FRIDAY NIGHT BEFORE.

THAT'S WHY RASHON LOGGINS TESTIFIED TO IT. THAT'S WHY TONY KENNEDY TESTIFIED TO IT.

AND THEN HE TELLS YOU ABOUT MONDAY NIGHT. WHAT DOES HE TELL YOU ABOUT MONDAY NIGHT? HE TELLS YOU THAT HE GOES TO CLEMSON. HE GOES TO CLEMSON WITH PHILLIP LEE AND SOME OTHER PEOPLE TO GO TO ANOTHER FRIEND'S HOUSE TO GET TUITION MONEY FROM HIS PARENTS AND THEY'RE THERE ALL DAY AT THEIR FRIEND'S PARENTS' HOUSE. AND THAT THEY COME BACK.

AND YOU'LL NOTICE WHEN THEY PULLED IN, YOU KNOW, HE DIDN'T PAY QUITE MUCH OF ATTENTION BUT HE NOTICED -- HE SAW THE GREEN GALANT PARKED HERE. HE SAW THE GREEN GALANT AND HE SAW FIVE PEOPLE. HE SAW FIVE PEOPLE.

HE RECOGNIZED DUSHUN IMMEDIATELY AND OF COURSE LATER REALIZED THE OTHERS WERE LIMEL, SHAKEEM, MAURICE AND THIS OTHER PERSON AGAIN THAT WE DON'T EVEN -- DON'T EVEN KNOW HIS LAST NAME, BECAUSE LUCIUS HASN'T ARRIVED YET. SO HE SEES FIVE PEOPLE, DOESN'T PAY MUCH OF ATTENTION.

PHILLIP GOES IN AND GETS HIS HAIR CUT. THEY DECIDE

TO COME BACK OUT AGAIN. SOMEBODY ASKED THE TWO OF THEM IF THEY WANTED A RIDE BACK TO THE DORM. THEY DECLINED. THE WORST DECISION IN PHILLIP LEE'S LIFE. IT'S UNBELIEVABLE THAT A SIMPLE DECLINATION OF A RIDE HOME AND NONE OF US WOULD BE HERE RIGHT NOW.

HE DECLINED. HE DECIDED TO WALK UP WITH TONY KENNEDY. AND WALKING UP IT WAS JUST THE TWO OF THEM. AND IMMEDIATELY DUSHUN STARTS -- STARTS TALKING TO HIM. HE STARTS IT AGAIN. OF ALL THE TESTIMONY YOU'VE HEARD, THE ONE THING THAT HAS BEEN ABSOLUTELY UNCONTRADICTED AND THE SAME, IS THAT EVERY TIME THERE WAS A CONFRONTATION THERE WAS DUSHUN STATEN. YOU HAVEN'T HEARD ANYTHING FROM THAT WITNESS STAND TO INDICATE OTHERWISE. HE WAS THE AGGRESSOR. HE WAS THE ONE THAT STARTED THINGS, NOT PHILLIP LEE. JUST BECAUSE PHILLIP LEE WAS SIX-THREE AND WEIGHED TWO-FIFTY, DOESN'T MEAN HE WAS A MENACE.

YOU KNOW, THE DEFENSE SAID IN HIS OPENING STATEMENT, HE REFERRED TO PHILLIP LEE AND HIS FELLOW BENEDICT COLLEGE STUDENTS AS A POSSE. HE SAID YOU WERE GOING TO SEE EVIDENCE THAT PHILLIP HAD A GUN.

HE ATTACKED PHILLIP LEE, A MAN THAT CAN'T COME IN HERE AND DEFEND HIMSELF, IN FRONT OF HIS MOTHER AND GRANDMOTHER, WITH EVIDENCE THAT NEVER MATERIALIZED.

A POSSE. HE'S A YOUNG MAN ATTENDING COLLEGE IN COLUMBIA, SOUTH CAROLINA, WITH NO DRUGS AND NO ALCOHOI ™

HIS SYSTEM WHEN THEY CHECKED HIS BLOOD AT HIS AUTOPSY, WITH NO GUNSHOT RESIDUE PRIMER ON HIS HANDS, THEY SWABBED HIS HANDS LAYING ON THE AUTOPSY TABLE.

AND THEN WALKING UP HERE. AND IT'S DUSHUN STATEN THAT STARTS THE FIGHT OR STARTS THE CONFRONTATION, DUSHUN. AND PHILLIP STANDS HIS GROUND. HE STANDS HIS GROUND. IT'S HIS CAMPUS.

AND THEY WERE ARGUING BACK AND FORTH. AND THE GUY IN THE BLACK NORTHFACE JACKET LATER, I SUBMIT TO YOU IS LIMEL SIMS, HE'S ARGUING. AND THEN LUCIUS COMES. YOU SEE, THERE'S FIVE OF THEM THERE AND LUCIUS MAKES SIX. AND I'LL GET TO WHY THAT'S IMPORTANT. LUCIUS MAKES SIX. EVERYONE WAS TALKING ABOUT THERE WAS FIVE PEOPLE HERE AND THEN LUCIUS COMES UP AND THAT MAKES SIX.

AND ONE OTHER POINT WITH TONY KENNEDY'S, DURING THAT FRIDAY NIGHT CONFRONTATION, IF YOU REMEMBER TONY'S TESTIMONY WHEN LUCIUS AND DUSHUN -- WHEN IT WAS BROKEN UP AND THEY GOT BACK IN THE WHITE CAR BEFORE SERGEANT BOYD ARRIVED TO MAKE SURE EVERYONE WAS OKAY, REMEMBER SERGEANT BOYD SAID SHE EVEN TALKED TO PHILLIP TO MAKE SURE EVERYTHING WAS OKAY.

THEY PULLED OUT AND THEY STOPPED. AND WHO WAS IT THAT GOT OUT OF THE CAR? IT WAS LUCIUS. AND HE GOT OUT AND HE LOOKED AROUND. I'M JUST -- I'M HERE -- I'M REMEMBERING FACES. I'M REMEMBERING FACES. THAT'S TONY

KENNEDY'S TESTIMONY.

AND LUCIUS PULLS UP AGAIN. THERE'S NO QUESTION ABOUT IT. LUCIUS IS A BIG GUY. LUCIUS IS STICKING UP FOR HIS LITTLE BROTHER. THERE'S NO DOUBT ABOUT THAT. LUCIUS JUMPS INTO THE ARGUMENT. ACCORDING TO TONY, HE TOOK OVER THE ARGUMENT.

NOW IS THAT -- IS THAT HARD TO IMAGINE IN YOUR MIND THAT LUCIUS STATEN, AS BIG AS HE IS, WOULD TAKE OVER THE ARGUMENT WHEN HE'S BIGGER THAN ALL OF THE REST OF THESE GUYS AND PHILLIP LEE IS SIX-TWO, SIX-THREE, TWO-FIFTY? ISN'T THAT LOGICAL? HE'S TAKEN OVER THE ARGUMENT. THAT'S WHAT TONY KENNEDY TESTIFIED TO. THAT'S WHAT HE SEES.

AND WHAT ELSE DOES HE SEE? HE SAYS THAT LUCIUS SAYS -- JUST LIKE RASHON LOGGINS -- THEY BOTH -- ACTUALLY ALL THREE OF THEM -- LUCIUS SAYS, "ALL RIGHT, LET'S GO." THAT WASN'T PULLED OUT OF THEM ON -- ON THIS DYNAMIC CROSS-EXAMINATION BY EITHER DEFENSE LAWYER. THEY ADMITTED THAT IN THEIR STATEMENTS TO THE POLICE AND THEY ADMITTED THAT IN THEIR DIRECT EXAMINATION TESTIMONY TO YOU. ALL THREE OF THEM SAID, LUCIUS STATEN SAID, "LET'S GO" AND TURNED AROUND. THOSE ARE THE STATE'S WITNESSES THAT SAID THAT.

BUT WHAT DOES TONY KENNEDY ALSO SEE HIM DO? WELL TONY KENNEDY SEES DUSHUN STATEN, DUSHUN STATEN WHO IS NOT A PART OF THE ARGUMENT -- WHO IS NOT NOW PART OF THE ARGUMENT -- LUCIUS WAS UP ON THE SIDEWALK AROUND THE GRASS

AREA WHERE THE VICTIM WAS. A GUY IN THE BLACK NORTHFACE JACKET IS KIND OF FALLING BACK, IF YOU REMEMBER TONY'S TESTIMONY. HE SEES DUSHUN GO TO THE CAR, OBTAIN A SILVER REVOLVER -- AND I'LL EXPLAIN THE IMPORTANCE OF THAT, WEARING A YELLOW JACKET. HE SEES IT. TONY KENNEDY SEES THAT, GET THE GUN. IT'S GOT A RED BANDANA WRAPPED AROUND IT, THE HANDLE OF IT, AND HANDS THE GUN TO THE MAN IN THE BLACK NORTHFACE COAT.

AND I ASKED HIM, "WHEN -- WHEN DUSHON HANDED THAT GUN TO THE GENTLEMAN IN THE BLACK NORTHFACE, DID YOU HAVE ANY TROUBLE SEEING THAT, STANDING RIGHT HERE -- STANDING RIGHT HERE AND LUCIUS WALKING BACK TO THE CAR? WHEN HE'S STANDING HERE AND THE GUY IN THE BLACK NORTHFACE IS OVER HERE THAT HE HANDED THE GUN, DID YOU HAVE ANY TROUBLE WITH THAT LIGHT AND ALL THAT LIGHTING OUT THERE?" YOU'VE BEEN TO THE SCENE, ALL THOSE LIGHTS ACROSS THE BACK PARKING LOT I HOPE SOMEBODY OBSERVED. I HOPE ONE OF Y'ALL SAW THAT, ALL OF THOSE LIGHT POLES RUNNING DOWN HERE.

DID HE HAVE ANY PROBLEM SEEING THE GUN? HE DIDN'T. AND WHAT DID HE SEE? HE SAID HE SAW LUCIUS STATEN LOOK, TURN TO THE GUY WITH THE GUN THAT HE HAD NO TROUBLE SEEING AND NOD. THAT'S WHAT TONY KENNEDY SAID. AND THEN THE SHOTS ARE FIRED.

MANNY PERDUE. MANNY PERDUE TELLS YOU, LADIES AND GENTLEMEN, THAT HE GETS BACK TO CAMPUS AROUND THE 8TH.

AND THAT HE MEETS THESE GUYS BECAUSE THEY'RE FRIENDS WITH HIS COUSIN, HIS COUSIN LAMAR OR MAR PERDUE. THAT'S HOW HE INTRODUCES HIMSELF -- THAT'S HOW HE GETS TO KNOW HIM. THE DEFENDANTS ARE FRIENDS WITH HIS COUSIN, MAR PERDUE.

SO HE KNOWS THEM. HE SEES THEM HANGING OUT IN THE CAMPUS ALL WEEK LONG AS WELL. HE IS PRESENT AT THE SCENE ON FRIDAY NIGHT. SO HE IS PRESENT AT THE SAME SCENE THAT RASHON LOGGINS, TONY KENNEDY AND BRANDON McCANTS, THE DEFENDANTS' FRIEND. SO FOUR WITNESSES, INCLUDING ONE OF THE DEFENDANTS' FRIENDS, FOUR WITNESSES, TESTIFIED ABOUT A DISPUTE, BAD BLOOD BOILING, BETWEEN DUSHUN STATEN AND THE VICTIM PHILLIP LEE ON FRIDAY NIGHT. AND, OF COURSE, THREE OF THEM TALK ABOUT BIG BROTHER JUMPING IN AS WELL.

AND THEN ON MONDAY, JANUARY THE 15TH, MANNY, AGAIN, HE'S DOWN HERE SLAP-BOXING -- SLAP-BOXING WITH A FRIEND OF HIS. LIKE RASHON LOGGINS, HE'S NOT WITH TONY KENNEDY WHEN THEY'RE WALKING UP THERE. IT'S JUST TONY KENNEDY AND THE VICTIM.

SO LIKE RASHON LOGGINS, HE'S BACK HERE. BY THE TIME HE GETS UP HERE, LUCIUS HAS ALREADY ARRIVED. SO RASHON -- RASHON LOGGINS AND MANNY PERDUE DON'T GET UP THERE UNTIL AFTER LUCIUS HAD ARRIVED. TONY, OF COURSE, IS THERE BEFORE LUCIUS EVER ARRIVES. BUT EVEN, ACCORDING TO BRANDON McCANTS, THEIR OWN WITNESS, WHEN LUCIUS ARRIVES THERE'S STILL FIVE OR TEN MINUTES OF ARGUMENT.

AND REMEMBER THIS, TRY AND PUT THE SCENE IN YOUR -- SOME OF YOU ARE PROBABLY WONDERING, "WHY IS MR. GASSER ASKING THAT QUESTION?" YOU KNOW, WE'RE IN THIS COURTROOM WHERE ONLY ONE PERSON TALKS. BUT YOU'VE NOT PUT YOURSELF OUT AT THE SCENE. YOU KNOW, YOU CAN CLOSE YOUR EYES AND PICTURE YOURSELF BACK OUT AT THAT SCENE YESTERDAY. AND THEN PICTURE IT ON AN EVENING, A MONDAY EVENING ON A COLLEGE CAMPUS WITH ALL THE PEOPLE, ALL THE PEOPLE TALKING.

AND THEN IMAGINE THE ARGUMENT THAT WAS GOING ON. DO YOU THINK THERE WAS JUST ONE PERSON TALKING AT ONE TIME? THE ARGUMENT AND PROFANITY GOING ON. CERTAIN PEOPLE ARE SEEING THINGS THAT OTHER PEOPLE AREN'T SEEING. CERTAIN PEOPLE ARE HEARING THINGS THAT OTHER PEOPLE AREN'T HEARING. THAT THAT'S THE ENVIRONMENT YOU'VE GOT TO PUT YOURSELF IN WHEN YOU'RE ANALYZING THIS EVIDENCE.

AND MANNY PERDUE SAYS, HE SAYS HE COMES UP THERE. HE SAYS THAT DUSHUN STATEN HAD ALREADY BACKED OFF. HE NEVER EVEN SAYS DUSHUN WAS EVEN ARGUING WITH THE VICTIM. WHEN HE GETS UP THERE IT'S LUCIUS -- IT'S LUCIUS THAT'S ARGUING WITH THE VICTIM AND THE GUY IN THE BLACK NORTHFACE. THE SAME THING RASHON SEES, SOMEBODY WHO HASN'T EVEN SPOKEN TO ANY OF THESE PEOPLE IN THIRTEEN MONTHS, WASN'T EVEN IN THE COURTROOM DURING ANY OF THIS TESTIMONY LIKE ALL OF THE OTHER WITNESSES WERE.

BUT HE SEES THE -- LUCIUS AND THE GUY IN THE BLACK NORTHFACE ARGUING WITH THE VICTIM. AND THEN HE HEARS -- AND HE SAID, LUCIUS SAYS, "LET'S GO". ALL THREE OF THEM. ALL FOUR OF THEM IF YOU INCLUDE BRANDON McCANTS. ALL OF THEM SAY LUCIUS SAYS, "LET'S GO".

AND HE TURNS AND HE HEARS LUCIUS SAY, "GET THE HAMMER", "GET THE HAMMER". NOW OF ALL THE THINGS THAT YOU COULD IMAGINE, IF HE'S GONNA MAKE THIS UP, HE COULD HAVE SAID, "GET THE HAMMER". I GUESS HE JUST PULLS THAT OUT OF LEFT FIELD, "GET THE HAMMER". OF ALL THE OTHER THINGS HE COULD HAVE SAID.

TELL ME WHEN YOU HEARD THE TESTIMONY FROM MANNY PERDUE FROM THAT WITNESS STAND? WHEN DID YOU HEAR THE TESTIMONY THAT ON FRIDAY NIGHT BEFORE HE SAW LUCIUS WITH A GUN AND POINTED AT THE VICTIM? WHEN DID YOU HEAR THAT TESTIMONY? YOU DIDN'T. WHEN DID YOU HEAR HIM SAY HE SAW DUSHUN WITH A GUN ON FRIDAY? HE SAW DUSHUN WITH A GUN ON SATURDAY? HE SAW DUSHUN WITH A GUN ON SUNDAY?

I MEAN, IF HE'S GONNA LIE, LADIES AND GENTLEMEN, IF HE'S GONNA PERJURE HIMSELF, DON'T YOU THINK HE OUGHT TO DO A BETTER JOB OF DOING IT. IF ALL HIS GOAL IS TO COME IN HERE AND IS TO LIE AGAINST THESE TWO INDIVIDUALS, TELL ME WHEN YOU HEARD HIM SAY, "I HEARD EITHER ONE OF THESE DEFENDANTS THREATEN PHILLIP LEE OR I SAW EITHER ONE OF THESE DEFENDANTS WITH A GUN POINTED AT PHILLIP LEE". I

MEAN, IF HE'S GONNA LIE.

"GET THE HAMMER." AND HE SEES DUSHUN. NOW NO ONE ELSE HEARS THAT "GET THE HAMMER". HE SEES A NOD. NO ONE ELSE HEARS THAT "GET THE HAMMER". BUT EVERY SINGLE WITNESS PUT DUSHUN IN THIS YELLOW JACKET. AND YOU KNOW WHAT'S INTERESTING? NOT ONLY DID RASHON LOGGINS, NOT ONLY DID TONY KENNEDY, NOT ONLY DID MANNY PERDUE, GUESS WHO NEVER TALKED ABOUT WHAT DUSHUN STATEN WAS WEARING? WHY IS THAT THEY DIDN'T ASK HIM THE QUESTION? WHY DIDN'T THEY ASK HIM THE QUESTION?

HE NEVER SAID DUSHUN WASN'T WEARING THE YELLOW JACKET, BRANDON McCANTS. LUCIUS STATEN NEVER SAID DUSHUN WASN'T WEARING THE YELLOW JACKET.

THE ONLY EVIDENCE IN THE RECORD IS THREE PEOPLE THAT SAW HIM WITH THE YELLOW JACKET AND TWO PEOPLE THAT HAD AN OPPORTUNITY AND NEVER SAID HE WASN'T WEARING IT. DON'T YOU THINK IF WASN'T WEARING IT, THEY WOULD HAVE TESTIFIED TO THAT?

SO THAT'S THE THREE EYEWITNESSES. THOSE -- THAT'S THE TESTIMONY OF THE THREE EYEWITNESSES. "GET THE HAMMER" AND HE GOES AND HE GETS A SILVER GUN. HE WASN'T SURE, SILVER GUN. HE'S NOT FAMILIAR WITH GUNS THE WAY TONY KENNEDY IS AND I'LL EXPLAIN HOW HE IS FAMILIAR WITH GUNS. AND THEN HE HANDS IT TO THE GUY IN THE BLACK NORTHFACE, BLACK NORTHFACE COAT.

BOTH THESE INDIVIDUALS SAY, "THE GUY IN THE BLACK NORTHFACE COAT SHOT AND KILLED PHILLIP LEE", BOTH THESE INDIVIDUALS, TONY AND MANNY. HE SAID IT WAS EITHER THE GUY IN THE BLACK NORTHFACE OR LUCIUS.

AND AS I TOLD YOU FROM MY OPENING STATEMENT AND AS WE'VE STIPULATED, LUCIUS STATEN DID NOT FIRE ANY GUN THAT NIGHT. LUCIUS STATEN IS NOT THE KILLER. DUSHUN STATEN IS NOT THE KILLER. HE SAID IT WAS EITHER LUCIUS OR THE GUY IN THE BLACK NORTHFACE. AND WE ALL KNOW IT WASN'T LUCIUS.

SO THE BLACK NORTHFACE, EACH TO SEE THE GUY IN THE BLACK NORTHFACE AND THEY KNOW MO SANDERS. AND I'LL GET TO THAT.

SO WHAT IS IT THAT CORROBORATES THESE THREE WITNESSES? WHAT EVIDENCE DO YOU HAVE TO CORROBORATE, WHEN YOU'RE BACK IN YOUR JURY ROOM, WHEN YOU'RE ASKING YOURSELF, OKAY, WHY SHOULD WE BELIEVE THE STATE'S CASE? WHY SHOULD WE FIND THESE TWO GENTLEMEN GUILTY? WHAT IS IT -- THESE ARE THE THREE WITNESSES THAT THEY OFFERED AS EYEWITNESSES, WHAT IS IT THAT THEY'VE ALSO OFFERED TO CORROBORATE, FIRST ABOUT THEIR INDEPENDENT CREDIBILITY AND OTHER EVIDENCE?

FIRST OF ALL, YOU'VE GOT ANDREW BRITT. WHAT DOES ANDREW BRITT OFFER TO CORROBORATE?

WELL, ANDREW BRITT CORROBORATES THE FACT THAT THERE'S ANIMOSITY. HE WASN'T THERE ON FRIDAY NIGHT BUT HE

WAS WITH PHILLIP LEE BY HIMSELF ON SATURDAY, IF YOU REMEMBER. WELL, THERE MIGHT HAVE BEEN ONE OR TWO OTHER PEOPLE THERE. BUT IT WAS THE SATURDAY ARGUMENT.

SO AGAIN, IT WASN'T JUST FRIDAY NIGHT THAT DUSHUN STATEN WAS TALKING TRASH TO PHILLIP LEE. IT WAS SATURDAY NIGHT AS WELL. THAT'S WHAT ANDREW BRITT TESTIFIED TO. HE WASN'T THERE ON FRIDAY NIGHT. HE SEES DUSHUN STATEN IN THE SAME PARKING LOT AGAIN STARTING A VERBAL ALTERCATION AGAIN WITH PHILLIP LEE. AND AGAIN, ONCE AGAIN, LUCIUS STATEN'S GOTTA COME STICK UP FOR HIS LITTLE BROTHER. AND I AGREE WITH MR. STRICKLER, LIKE ANY BIG BROTHER WOULD DO.

BUT AGAIN, THAT'S TWO ARGUMENTS, FRIDAY NIGHT, SATURDAY NIGHT. IT JUST GOES TO SHOW YOU. IT JUST OFFERS Y'ALL SOME SORT OF -- SOME SORT OF BACKGROUND AS TO THE ANIMOSITY THAT WAS BREWING BETWEEN THE PARTIES IN THAT PARKING LOT DURING THAT WEEKEND THAT ULTIMATELY LED TO PHILLIP LEE'S DEATH. THAT'S THE IMPORTANCE. IT SHOWS SOME SORT OF MOTIVATION OR SOME SORT OF INTENT ON THE PART OF THE PARTIES. BECAUSE A REASONABLE JURY, I SUBMIT TO YOU, WOULD WANT TO KNOW WHY SOMETHING HAPPENED. YOU DON'T HAVE TO KNOW WHY TO CONVICT. BUT REASONABLE PEOPLE WANT TO KNOW WHY.

BUT THE MOST IMPORTANT THING THAT ANDREW BRITT OFFERS IS A STATEMENT. YOU KNOW, HOW OFTEN IN A HOMICIDE CASE DOES THE JURY GET TO HEAR FROM THE VICTIM. SOUND

KIND OF FUNNY? HOW OFTEN IN A HOMICIDE CASE DOES THE JURY GET TO HEAR FROM THE VICTIM?

YOU HEARD SOME WORDS FROM PHILLIP LEE. YOU HEARD FROM PHILLIP LEE BECAUSE ANDREW BRITT, HIS ROOMMATE, TOLD YOU ON SUNDAY NIGHT WHEN HE WAS IN HIS DORM ROOM, THE ROOM THEY SHARED TOGETHER, THAT PHILLIP LEE, THE VICTIM, CAME IN ANGRY, UPSET. A GUY THAT'S GOT A SOFT DEMEANOR, PUNCHING THE WALLS, HE WAS ANGRY. HE WAS WALKING AROUND PACING.

AND YOU REMEMBER? YOU HEARD FROM PHILLIP LEE. "YO, THOSE DUDES ..." OR WHATEVER IT WAS. "THOSE DUDES, WE GOT IN WITH IT LAST NIGHT -- OR SATURDAY NIGHT, PULLED A GUN OUT".

AND MR. STRICKLER'S RIGHT. HE WAS VERY SPECIFIC, I AGREE ONE HUNDREQ PERCENT WITH MR. STRICKLER. WE CAN'T LEAD OUR WITNESSES. YOU HEARD A NUMBER OF TIMES THAT THERE WAS OBJECTIONS TO LEADING.

BUT WHEN ANDREW BRITT TESTIFIED HE SAID, "THOSE GUYS PULLED A GUN OUT ON ME". MR. STRICKLER IS ONE HUNDRED PERCENT CORRECT. THEN PHILLIP LEE WAS SPECIFIC WHEN ANDREW BRITT ASKED HIM, "WHO". "THE SHORT ONE, THE LITTLE BROTHER". WELL THE ONLY PEOPLE THEY GOT IN AN ARGUMENT WITH THE NIGHT BEFORE, LADIES AND GENTLEMEN, THE ONLY PERSON THAT PHILLIP LEE HAD WORDS WITH THE NIGHT BEFORE WAS LUCIUS STATEN AND DUSHUN STATEN. THOSE ARE THE ONLY

TWO PEOPLE HE GOT IN AN ARGUMENT WITH. AND HE'S TELLING, IN AN UPSET, EXCITED STATE OF MIND, ON THAT SUNDAY NIGHT, THAT THE LITTLE BROTHER PULLED A GUN OUT ON HIM.

SO WE KNOW -- WHY WOULD PHILLIP LEE, WHY WOULD THE MAN, THE HOMICIDE VICTIM, WHY WOULD HE LIE ABOUT WHO HAD POINTED A GUN AT HIM ON THAT SUNDAY NIGHT WITH HIS ROOMMATE? IS THERE ANYTHING MORE CREDIBLE?

I MEAN, IF SOMEBODY PULLS A GUN OUT AT YOU AND YOU TELL SOMEBODY, YOU'RE NOT GONNA MAKE UP SOMEBODY ELSE. SO YOU HEARD FROM THE VICTIM. AND WHO IS POINTING A GUN AT PHILLIP LEE OR PULLING A GUN OUT AT PHILLIP LEE ON SUNDAY NIGHT, TWENTY-FOUR HOURS BEFORE HE'S KILLED? DUSHUN STATEN. THAT PUTS THE GUN IN DUSHUN STATEN'S HAND AT LEAST THAT SUNDAY NIGHT.

THAT'S WHAT YOU HEARD FROM PHILLIP LEE. THAT'S CORROBORATION. BY PUTTING THE GUN IN HIS HAND ON SUNDAY NIGHT, THAT MEANS HE HAD POSSESSION OF IT. DOES THAT MEAN HE -- DOES THAT AUTOMATICALLY MEAN HE HAD POSSESSION OF IT THE NEXT DAY WHEN HANDED IT? NO. BUT IT'S EVIDENCE THAT YOU CAN USE THAT HE HAD POSSESSION OF A GUN.
THAT'S CORROBORATION.

WHAT ELSE? THE LIGHTING, THE LIGHTING THAT WAS OUT THERE AT THE SCENE. EVERY WITNESS, INCLUDING THE DEFENDANT, SAID THEY DIDN'T HAVE ANY PROBLEM. THAT'S WHY I ASKED HIM IF HE RECOGNIZED THE FACES OF THE WITNESSES.

THAT'S WHY I ASKED THAT OF LUCIUS. EVERY WITNESS INDICATED.

SO WHEN YOU'RE BACK THERE, WHEN THE JUDGE GIVES YOU SOME FACTORS YOU CAN CONSIDER, HE'S GONNA CHARGE YOU THE LAW OF IDENTIFICATION. THE OPPORTUNITY THE WITNESSES WHO CAME INTO COURT AND SAID THEY SAW WHAT THEY SAW, WHAT WAS THE OPPORTUNITY. AND THAT'S WHERE LIGHTING COMES IN. THIS WAS A TREMENDOUSLY WELL-LIT PARKING LOT. SO THE FACT THAT IT WAS WELL-LIT CORROBORATES, SUPPORTS THESE THREE WITNESSES' ABILITY TO SEE WHAT THEY SAW.

WHAT ELSE? NO SPENT SHELL CASING. I DON'T KNOW IF Y'ALL CAUGHT IT WHILE WE WERE GOING INTO THAT. NO SPENT SHELL CASING.

WHY IS THAT IMPORTANT? THEY SEARCHED THE ENTIRE, ENTIRE CRIME SCENE SLOWLY. THEY TAPED IT ALL OFF. USED SPECIAL HIGH POWERED BEAMS. YOU SEE IF IT'S A SEMI-AUTOMATIC PISTOL AND THE GUN IS DISCHARGED, THE SHELL CASING COMES OUT.

BUT IF YOU REMEMBER TONY KENNEDY, TONY KENNEDY WHO'S NOT ONLY A STUDENT AT BENEDICT COLLEGE BUT TOOK LAST SEMESTER OFF TO JOIN THE ARMY RESERVES, WHO WENT TO BASIC TRAINING AT FORT SILL, OKLAHOMA, WHO IS AN E-2 IN THE UNITED STATES ARMY, SERVING HIS COUNTRY, WHO IS TRAINED IN IDENTIFYING AND THE USE OF WEAPONRY. HE KNOWS THE DIFFERENCE BETWEEN A REVOLVER THAT HAS A CYLINDER. YOU

DON'T EVEN HAVE TO BE IN THE ARMY. ANYONE THAT WATCHES TELEVISION AND MOVIES, THE OLD SIX-SHOOTERS, WESTERNS VERSUS THE NEW MOVIES YOU SEE NOW, THE MEL GIBSON MOVIES WHERE THEY'RE SEMI-AUTOMATICS. WITH A SEMI-AUTOMATIC, THE SHELL CASING IS EJECTED.

WHY IS THAT IMPORTANT? TONY KENNEDY, FROM THE VERY FIRST TIME HE MET WITH THE POLICE ON THE 16TH, THE DAY AFTER, AND EVERY TIME HE MET WITH THE POLICE, PUT IN HIS STATEMENT, AND WHEN HE TOLD YOU, HE COULD -- HE -- HE COULD SEE SO WELL OUT THERE, THE PLACE THAT Y'ALL'VE BEEN. HE WAS STANDING RIGHT THERE AND HAD AN UNOBSTRUCTED VIEW. AND JUST LIKE NOW, WITH THAT TREE -- I'M SURE SOME OF YOU PROBABLY LOOKED AT THAT TREE AND SAW WHERE THERE'S NO -- THERE'S JUST BUMPS. THERE'S NOT A LOT OF LEAVES SO THERE'S NOTHING LIKE LEAVES. AND THIS WAS IN JANUARY AND NOW WE'RE IN FEBRUARY.

SO AN UNOBSTRUCTED VIEW, THAT CLOSE. TONY KENNEDY HAD SUCH AN ABILITY TO SEE THAT HE COULD TELL IT WAS DUSHUN STATEN TOOK THE GUN OUT OF THE CAR. IT WAS SO WELL-LIT AND HE WAS SO CLOSE TO DUSHUN WHEN HE HANDED IT, WHEN HE TOOK IT OUT OF THE CAR, HE COULD TELL IT WAS A REVOLVER. AND HE'S NOT MISTAKEN BECAUSE THEY NEVER FOUND A SPENT SHELL CASING BECAUSE WHEN YOU FIRE A REVOLVER AND YOU LEAVE THE SCENE WITH THE GUN, YOU CARRY THE SPENT SHELL CASING WITH YOU IN THE CYLINDER.

THAT IS CRITICAL. THAT IS COMPLETE CORROBORATION. THAT'S WHAT YOU CAN USE TO SAY, TONY KENNEDY, HIS ABILITY TO OBSERVE WAS SO GOOD, HE COULD EVEN TELL WHAT GUN IT WAS.

WELL, IF HE CAN TELL A GUN -- WHAT GUN IS A SILVER REVOLVER, DON'T YOU THINK HE CAN SEE DUSHUN STATEN'S FACE? HOW DIFFICULT IS IT FOR HIM TO SEE THIS YELLOW COAT? HE'S SEEN HIM OUT THERE ALL WEEK. IF HE CAN SEE A REVOLVER, DON'T YOU THINK HE CAN SEE DUSHUN STATEN'S FACE WHEN HE GETS THAT REVOLVER AND HE HANDS IT? TONY KENNEDY. NOW, LADIES AND GENTLEMEN, RIGHT THERE, RIGHT THERE ON DUSHUN STATEN.

YOU KNOW, MR. STRICKLER GOT VERY EMOTIONAL. HE TELLS YOU YOU CAN'T BASE YOUR VERDICT ON EMOTION. AND MR. TAYLOR GOT EMOTIONAL. AND WE DO THIS FOR A LIVING. BUT THE FACT THAT WE DO THIS FOR A LIVING AS PROFESSIONALS, IF YOU DON'T GET EMOTIONAL WHEN YOU'RE TALKING ABOUT LIFE AND DEATH, WHEN YOU'RE TALKING ABOUT REPRESENTING PEOPLE CHARGED WITH CRIMES AND WHEN YOU'RE TALKING ABOUT REPRESENTING THE CITIZENS OF RICHLAND COUNTY AND HOLDING PEOPLE ACCOUNTABLE. IF YOU CAN'T GET EMOTIONAL ABOUT IT, YOU NEED TO FIND ANOTHER WORK.

BUT TONY KENNEDY, A MAN WHOSE CREDIBILITY SHOULD NOT BE QUESTIONED BY YOU, I SUBMIT. HE IS ONE OF YOUR CITIZENS. HE IS A STUDENT AT BENEDICT COLLEGE, SPORTS

MEDICINE AND COMPUTER SCIENCE, DOUBLE DEGREE, SERVING HIS COUNTRY. AND MR. TAYLOR HAS THE AUDACITY, THE GALL, TO SAY THAT THESE YOUNG MAN SOMEHOW COULD BE IN SOME SORT OF TROUBLE. WHY BECAUSE THE WAY THEY LOOK? THAT IS OFFENSIVE.

THESE THREE YOUNG MEN HAVE NEVER BEEN IN TROUBLE. THESE THREE YOUNG MEN ARE AT COLLEGE TRYING TO FURTHER THEIR LIVES. AND TO INFER THAT SOMEHOW THEY'RE INVOLVED ON THE BAD SIDE OF THE LAW IS NOT FAIR. IT'S NOT FAIR TO THESE THREE YOUNG MEN AND IT'S NOT FAIR TO THIS CASE.

THIS YOUNG MAN TOLD YOU UNDER OATH. WHAT REASON DOES HE HAVE? ALL FIVE OF THESE PEOPLE WERE THERE. THEY WERE ALL FIGHTING IN SOME FORM OR FASHION VERBALLY WITH HIS FRIEND THAT'S DEAD NOW. WHAT REASON DOES HE HAVE TO JUST PICK OUT ONE OF THESE?

AND HE LOOKED -- YOU -- AND HE HAD THE OPPORTUNITY, OPPORTUNITY THAT THE MAN THAT TOOK THE GUN AND HANDED IT TO THE TRIGGER MAN WAS WEARING THIS YELLOW JACKET AND "I'VE SEEN HIS FACE ON THAT CAMPUS FOR A WEEK DURING THE DAY AND NIGHT".

MR. STRICKLER USES THE PHRASE, "GOD HELP US ALL". WELL, LADIES AND GENTLEMEN, IF IN A COURT OF LAW, IF WE CAN'T RELY ON THE TESTIMONY OF A YOUNG MAN AS CREDIBLE AS TONY KENNEDY TO COME IN THIS COURTROOM AND TELL YOU HE SAW WHAT HE SAW AND HE HAD THE OPPORTUNITY AND THIS YELLOW

JACKET'S FOUND IN DUSHUN'S APARTMENT, IF THAT'S NOT ENOUGH TO CONVICT HIM OF AIDING AND ABETTING, THEN GOD HELP EVERY CITIZEN IN THIS COMMUNITY BECAUSE WE'LL NEVER CONVICT A CRIMINAL.

THERE'S NOTHING WRONG WITH THE CREDIBILITY AND DECENCY OF THIS YOUNG MAN.

NO SPENT SHELL CASING, LINEUPS. THE REASON WHY I PUT IN ALL THE LINEUPS, LADIES AND GENTLEMEN, BECAUSE NOT ONLY DID THEY HAVE AN OPPORTUNITY TO SEE THESE PEOPLE ALL WEEK, TO INSURE -- TO INSURE THE VERACITY AND INTEGRITY OF THEIR ABILITY TO SEE, THE POLICE WHO HAVE BEEN ATTACKED AND ATTACKED AND ATTACKED, THEY DIDN'T JUST SHOW ONE PHOTO. THEY DIDN'T JUST SEE ONE PERSON IN JAIL. EVERY LINEUP THEY DID WAS TO INSURE THE INTEGRITY OF THIS PROCESS, TO PROTECT THE RIGHTS OF DUSHUN STATEN. THEY DIDN'T JUST SHOW HIM A PICTURE OF DUSHUN STATEN. THAT WOULD BE UNFAIR.

EVERY LINEUP THEY DID WITH SHAKEEM WILSON, WITH LUCIUS, EVERY LINEUP SHOWED EVERY WITNESS FOR THE STATE, WERE MULTIPLE PICTURES WITH NO IDENTIFIABLE FEATURES TO INSURE THE INTEGRITY. YET THEY WANT YOU TO BELIEVE THAT THEY JUST -- THEY JUST PUT A CASE TOGETHER.

ALL THIS WAS DONE TO INSURE THE INTEGRITY. EVERY SINGLE WITNESS CLEARLY WAS ABLE TO IDENTIFY THE PARTICIPANTS BECAUSE THEY'D SEEN THEM OUT THERE ALL WEEK

LONG DURING THE DAY AND NIGHT.

LARRY MASON. WHAT WAS LARRY MASON -- THINK ABOUT THIS. THERE'S NO QUESTION. EVERYTHING MR. COPELAND TOLD YOU FROM THIS WITNESS STAND WAS ABSOLUTELY TRUE. I ASKED HIM ONE QUESTION. BEFORE YOU RAN INTO THEM IN THE DORM ROOM IN THAT BUILDING ON HARDEN STREET, HAD YOU ANY IDEA HOW THEY GOT THERE? AND HIS ANSWER WAS, NO.

YOU ALL DO THE MATH. ALL OF THE WITNESSES SAY THERE ARE FIVE WITNESSES OUT HERE THEN LUCIUS COMES UP AND THERE'S SIX. THERE'S THESE FIVE AND THE UNKNOWN PERSON. AGAIN, I THOUGHT SOMEBODY SAID HIS NAME WAS KAREEM, LAST NAME UNKNOWN. WE DON'T KNOW.

BUT THERE WAS THESE FIVE, THE GUY WE DON'T KNOW, THESE FOUR AND THEN LUCIUS DRIVES UP. THAT'S SIX. SHOTS ARE FIRED. WITNESSES SAY EVERYONE THEY SEE JUMPS IN THE GREEN GALANT. OKAY? EXCEPT FOR MO. WE KNOW HE TAKES OFF RUNNING, MO SANDERS.

WELL, THERE'S HOW MANY PEOPLE OUT THERE? YOU'VE GOT EVERYTHING FROM FIFTEEN TO THIRTY PEOPLE, EYEWITNESSES OF AT LEAST SOME SORT OF EVENT. THE PEOPLE INVOLVED IN THIS ARE JUMPING IN A GREEN GALANT. THE GREEN GALANT IS SPEEDING OUT OF HERE. THE PEOPLE IN THE GREEN GALANT KNOW THAT THEY'RE IN THE GREEN GALANT AND THEY'RE INVOLVED IN THIS. HOW DIFFICULT IS IT TO MAKE THE ASSUMPTION, LADIES AND GENTLEMEN, THAT WHEN THEY LEAVE THE AREA IN THE GREEN

GALANT WITH FIVE PEOPLE IN THE GREEN GALANT, TWO OF THEM WANT TO GET OUT OF THE CAR.

THE WITNESSES SAW FIVE PEOPLE JUMP IN THE GREEN GALANT. TWO OF THEM WANT TO GET OUT OF THE CAR. THEY GET OUT OF THE CAR. THEY GET OUT OF THE CAR CLOSE TO CAMPUS. MR. COPELAND HAS NO IDEA HOW THEY GOT THERE.

WHAT IS LARRY MASON'S TESTIMONY? I GUESS IT'S JUST A COINCIDENCE THAT SHORTLY AFTER THIS SHOOTING TAKES PLACE, DRIVING ON TWO NOTCH ROAD, RIGHT NEAR WHERE IT HAPPENED, LARRY MASON JUST HAPPENS TO SEE THE SAME COLOR GREEN, SAME MODEL, SAME -- SIMILAR MAKE, YEAR, A GREEN GALANT WITH PAPER TAGS WITH THREE BLACK MALES IN IT.

YOU DO THE MATH. THERE'S SIX PEOPLE HERE, IF YOU INCLUDE LUCIUS. SHOTS ARE FIRED. MO TAKES OFF RUNNING. THAT LEAVES FIVE. FIVE JUMP IN THE CAR. TWO OF THEM ARE DROPPED OFF WHERE REVEREND COPELAND PICKS THEM UP AND LARRY GRANT (SIC) -- LARRY MASON WHO CALLED THE POLICE THE NEXT DAY AND THERE'S A REPORT, DRIVING AWAY SEES A GREEN GALANT WITH PAPER TAGS WITH THREE MALES IN IT ACTING EXTREMELY SUSPICIOUS AND AGITATED. SIX MINUS ONE IS FIVE MINUS TWO WHEN THEY'RE DROPPED OFF IS THREE. AND IT JUST SO HAPPENS LARRY MASON SEES -- I GUESS THAT'S JUST A COINCIDENCE, A GREEN GALANT WITH PAPER TAGS DRIVING AWAY FROM THE SCENE.

IT FITS. IT DOESN'T CREATE REASONABLE DOUBT. IT

FITS.

THE PEOPLE WITH THE DARK CLOTHES WERE THE PEOPLE THAT ARE ARGUING WITH LUCIUS. NO ONE EVER SAID MO SANDERS WAS WEARING A RACING JACKET. THE PEOPLE WITH THE DARK CLOTHES ARE THE ONES ARGUING WITH LUCIUS EXCEPT FOR THIS COAT. WHAT STOOD OUT WAS THE YELLOW COAT. NOT ONLY THEIR FACES BECAUSE THEY'D SEEN THEM AND THE FACT THAT LUCIUS WAS THE LARGEST OF THEM ALL. THAT'S WHY I ASKED THEM THAT QUESTIONS.

HE WAS EASILY RECOGNIZABLE. I MEAN, THAT'S COMMONSENSE. IF YOU SEE FIVE OR SIX PEOPLE AND THEY'RE ALL IN THE FIVE FOOT SOMETHING RANGE AND ONE OF THEM'S SIX-TWO AND IS A BIG HEALTHY YOUNG MAN, THAT'S THE PERSON THAT'S GONNA -- YOU KNOW, YOU'RE GONNA REMEMBER THAT PERSON PLUS THEY'VE SEEN HIS FACE.

BUT THOSE ARE THE TWO PEOPLE THAT STANDOUT. THOSE ARE THE PEOPLE THAT EASILY REMEMBER WHAT THEY'RE SAYING, WHAT THEY'RE DOING.

CREDIBILITY. CREDIBILITY, LADIES AND GENTLEMEN. FIRST OF ALL, WHEN YOU LOOK TO JUDGE SOMEBODY'S CREDIBILITY, WHEN YOU LOOK TO JUDGING CREDIBILITY, IS THE BASIC THING WHAT THEY'RE SAYING, IS IT THE SAME?

WHAT DO I MEAN BY THAT? THE BASIC THERE, EVERYTHING THAT THEY'VE TESTIFIED TO AS TO WHERE IT HAPPENED, AS TO WHAT THE MOTIVATION WAS, THE PRIOR BAD BLOOD, THAT'S ALL

CONSISTENT. AS TO WHERE IT HAPPENED, THE LOCATION, AS TO THE FACT THAT THERE WAS A GREEN GALANT THERE, AS TO THE APPROXIMATE TIME OF DAY, AS TO THE CLOTHING. ALL THOSE GENERAL THINGS ARE ALL THE SAME. THAT'S -- THEY CORROBORATE ONE ANTOHER.

BUT YOU WANT TO KNOW ANOTHER WAY TO JUDGE SOMEBODY'S CREDIBILITY? AS TO SPECIFIC THINGS, AS TO SPECIFIC THINGS AS TO WHAT WAS SAID OR WHAT EXACTLY SOMEBODY DID, THEY'RE DIFFERENT. AND I SUBMIT TO YOU, THAT'S WHAT MAKES IT CREDIBLE.

WHAT DO I MEAN BY THAT? BY WAY OF ILLUSTRATION, IF THREE OF YOU JURORS WERE TO LEAVE THIS COURTHOUSE AND TO GO TO LUNCH THIS AFTERNOON, SAY YOU GET TO GO TO LUNCH, THREE OF YOU, AND YOU'RE WALKING DOWN THE STREET. AND YOU HEAR A SCREECH AND YOU TURN AND THERE'S A THREE CAR ACCIDENT. OKAY? IF THE POLICE COME TO THE SCENE AND TAKE EACH ONE OF YOU SEPARATELY AND INTERVIEW YOU, THE BASIC STUFF, THE COLORS OF THE CAR, THE INTERSECTION, THE BASIC FACTS ARE GONNA BE THE SAME. BUT THE SPECIFICS ARE GONNA BE DIFFERENT.

SOMEBODY MIGHT HAVE SEEN SOMETHING THAT THE OTHER PERSON DIDN'T SEE. SOMEBODY MIGHT HAVE HEARD SOMETHING THAT THE OTHER PERSON DIDN'T HEAR. AND WHY IS THAT? BECAUSE WHEN WE ARE EXPERIENCING AN EVENT, YOU'RE PERCEIVING IT INDIVIDUALLY. MY FOCUS OF ATTENTION MIGHT

BE ON WHAT THIS PERSON'S SAYING OR DOING WHILE ANOTHER WITNESS'S FOCUS OF ATTENTION MIGHT BE ON WHAT THIS WITNESS IS SAYING OR DOING.

SO IT'S LOGICAL THAT RASHON LOGGINS -- LET ME TELL YOU SOMETHING, LADIES AND GENTLEMEN, HESITATE TO ACT? IF THESE WITNESSES WOULD HAVE TAKEN THAT WITNESS STAND AND TOLD YOU EVERYTHING THE SAME, EVERYTHING THEY HEARD WAS THE SAME, EVERYTHING THEY SAW WAS THE SAME, THEN I SUBMIT TO YOU, THAT'S WHEN YOU NEED TO STOP, THAT'S WHEN IT'S OBVIOUS THEY GOT TOGETHER. THERE'S NO WAY THAT THREE PEOPLE COULD HEAR THE EXACT SAME THING AND SEE THE EXACT SAME THING BASED ON THE SITUATION THAT WAS OCCURRING OUT THERE.

AND THE FACT THAT HE HEARS SOME THINGS AND DOESN'T HEAR OTHERS AND HE SEES SOME THINGS, THAT'S WHAT MAKES IT CREDIBLE. THAT'S WHAT MAKES IT CREDIBLE. THAT'S YOUR COMMONSENSE.

WHAT ELSE CAN YOU USE TO JUDGE THEIR CREDIBILITY? MR. FOREMAN AND LADIES AND GENTLEMEN, WHEN YOU'RE JUDGING SOMEBODY'S CREDIBILITY, IT'S NOT ONLY WHAT THEY SAY, IT'S WHAT THEY DON'T SAY.

WHERE IS IT? IF THESE THREE PEOPLE, IF THEY'RE GONNA PUT IT ON, THEN WHY WOULDN'T THEY SAY LUCIUS WORE RED BANDANAS? WHY WOULDN'T THEY CHARACTERIZE HIM AS WEARING RED BANDANAS? ALL OF THEM SAID HE WASN'T.

WHY WOULDN'T ANY OF THESE WITNESSES TALK TO THE POLICE AND SAY, "OH, BY THE WAY, LUCIUS HAD A GUN. I SAW HIM WITH A GUN". NONE OF THEM HAVE EVEN SAID EITHER ONE OF THESE DEFENDANTS HAD A GUN OR THREATENED ANYONE WITH A GUN WITH THEIR OWN EYES. I'M NOT TALKING ABOUT WHAT THE VICTIM PHILLIP LEE TOLD HIS ROOMMATE. BUT IF THESE THREE GUYS ARE JUST OUT TO GET LUCIUS AND DUSHUN STATEN, IT'S NOT ONLY WHEN YOU'RE JUDGING THEIR CREDIBILITY AS TO WHAT THEY SAW AND HEARD THAT NIGHT, IT'S WHAT THEY DIDN'T TELL YOU. THAT'S A GOOD INDICATOR. IF THEY'RE GONNA LIE, THEY'RE GONNA NAIL THEM.

SO WHEN YOU'RE JUDGING THEIR CREDIBILITY, THINK ABOUT WHAT THEY DIDN'T SAY AS WELL. AND THINK ABOUT THE FAIRNESS HERE, LADIES AND GENTLEMEN, WHEN JUDGING THEIR CREDIBILITY. YOU KNOW, DEFENSE COUNSEL WANTS YOU TO BELIEVE THESE THREE YOUNG MEN. THEY WANT YOU TO BELIEVE WHEN THEY'RE TELLING YOU THE TRUTH THAT LUCIUS NEVER WORE A RED BANDANA. OH, THEY'RE TELLING YOU THE TRUTH THERE THAT THERE WAS NO PRIOR THREATS TO KILL OR GUNS BEFORE THAT DAY. THEY'RE TELLING THE TRUTH THERE. THAT LUCIUS TURNED AROUND AND SAID, "LET'S GO", BECAUSE ALL THREE OF THEM SAY THAT. THEY'RE TELLING THE TRUTH THERE.

EVERYTHING THAT SEEMS TO SUPPORT THEIR THEORY, "OH, THESE GUYS ARE TELLING THE TRUTH". BUT WHEN THEY TELL YOU ALSO -- WHEN THEY TELL YOU ALSO THAT LUCIUS TOOK OVER THE

ARGUMENT AND WAS ARGUING HARD. WHEN THEY TELL YOU THAT LUCIUS NODDED AFTER DUSHUN HANDED THE GUN. WHEN THEY TELL YOU THAT LUCIUS SAID TO "GO GET THE HAMMER". WHEN THESE THREE INDIVIDUALS TELL YOU FACTS THAT IMPLICATE THESE TWO GENTLEMEN IN MURDER AND LYNCHING, THEY'RE NOT TELLING THE TRUTH.

NOW WHERE'S THE FAIRNESS THERE. USE YOUR COMMONSENSE. IS THAT FAIR? OH, THEY'RE CREDIBLE WHEN THEY'RE TELLING THE TRUTH WHEN THEY SAY STUFF THAT HELPS MY CLIENTS. BUT THEY'RE NOT CREDIBLE AND THEY'RE NOT TELLING THE TRUTH WHEN THEY TESTIFY TO CERTAIN THINGS THAT PROVE THE STATE'S CASE.

ALL THREE OF THESE YOUNG MEN, RASHON LOGGINS, GETTING HIS DEGREE, WORKING AT WAL-MART, INTERNING AT A NURSERY (SIC) -- NURSING HOME. I'VE ALREADY TALKED ABOUT TONY KENNEDY. I'M GONNA BRIEFLY TALK ABOUT MANNY PERDUE.

THEY YELLED AT MANNY PERDUE WHEN HE TESTIFIED. THEY GOT INCENSED WITH MANNY PERDUE WHEN THEY GAVE THEIR CLOSE.

YOU ALL ARE GONNA HAVE THE OPPORTUNITY. YOU WANT TO GO BACK THERE AND IMMEDIATELY SAY, "WE CAN'T BELIEVE A THING MANNY PERDUE SAID". THAT'S YOUR PREROGATIVE OBVIOUSLY. YOU'RE THE FINDERS OF THE FACTS. BUT I SUBMIT TO YOU THAT WOULD BE IN ERROR.

WHY IS THAT? ONE OF THE FACTORS THE JUDGE IS GOING TO TELL YOU IN JUDGING THE CREDIBILITY OF A WITNESS IS HIS

DEMEANOR ON THIS WITNESS STAND. AND YOU KNOW, WHO'S GONNA SAY WHAT ONE WILL DO WHEN ONE WITNESSES A MURDER? WHO'S GONNA SAY THAT SOMEBODY'S REACTION, SOMEBODY'S FEAR, IS SOMEHOW NOT WARRANTED?

MANNY PERDUE SAW HIS BEST FRIEND GET KILLED. THAT'S RIGHT -- OR ONE OF HIS FRIENDS GET KILLED. AND MANNY PERDUE WAS CLOSER TO LUCIUS AND DUSHUN THAN ANY OF THOSE WITNESSES. AND YOU REMEMBER WHAT HE SAID? IT WASN'T IN RESPONSE TO WHAT I ASKED HIM. WHEN MR. STRICKLER WAS YELLING AT HIM, "JAH WAS STILL OUT THERE. JAH WAS STILL OUT THERE".

DO YOU THINK THAT WAS AN ACT? DO YOU THINK THAT FEAR THAT WAS EMANATING FROM THIS WITNESS STAND WAS MAKE-BELIEVE? HE LEFT COLUMBIA, THOSE INDIVIDUALS WERE NOT CHARGED YET. YEAH, HE WENT TO THE POLICE. HE TOLD HIM ABOUT THE GUY IN THE BLACK NORTHFACE.

BUT THINK ABOUT IT. PEOPLE ARE AFRAID AND DON'T COME FORWARD OR DON'T COME FORWARD WITH ALL OF THE FACTS ALL THE TIME. AND YOU CAN'T HOLD FEAR AGAINST SOMEBODY. IF YOU THINK THAT WAS MAKE-BELIEVE FEAR, THEN DON'T BELIEVE A WORD HE SAID. BUT IF HE'S GONNA SAY SOMETHING, A LIE, DON'T YOU THINK IT WOULD HAVE BEEN BETTER THAN WHAT HE SAID? AND EVERYTHING HE'S TESTIFIED TO, AT LEAST ABOUT CONDUCT, IS CORROBORATED, EXCEPT FOR "GET THE HAMMER". AND WHY WOULD HE ONLY SAY THAT LUCIUS -- THAT'S THE ONLY

THING LUCIUS DID?

HE WAS SO AFRAID FOR HIS PERSONAL SAFETY, IF YOU REMEMBER, THAT WHEN HE LEFT HIS COLLEGE THAT HE PAID TUITION WITH ALL OF HIS STUFF, ALL OF HIS PERSONAL ITEMS, ALL OF HIS CLOTHES, EVERYTHING, HE NEVER RETURNED TO COLUMBIA UNTIL THE SUMMER OF 2001.

UNTIL YOU'RE IN THE SHOES OF SOMEONE WHO'S WITNESSED A KILLER WHERE THE KILLER KNOWS OR THE PEOPLE INVOLVED IN THE KILLING KNOW WHERE YOU LIVE, WHO'S TO SAY AND JUDGE? WAS HE WRONG? YES, HE WAS WRONG IN NOT COMING FORWARD SOONER. IS THERE AN EXPLANATION FOR IT? IS HE CORROBORATED? THAT'S GONNA BE UP FOR YOU TO DECIDE.

BUT TO SIMPLY ATTACK HIM AND YELL AT HIM WHEN FEAR IS SOMETHING THAT IS INDIVIDUAL AND UNIQUE TO ANYONE THAT WITNESSES A BRUTAL MURDER, IT'S NOT FAIR.

THE STATE'S CASE -- THAT'S THE STATE'S CASE.

NOW, I'M GONNA BRIEFLY TALK TO YOU ABOUT THE DEFENSE CASE AND I EXTREMELY APPRECIATE THE ATTENTION YOU'RE PROVIDING ME. I REALLY DO. I'M GONNA TALK TO YOU ABOUT THE DEFENSE CASE BRIEFLY.

THE DEFENSE IS MERE PRESENCE AND WITH REGARD TO AT LEAST MR. TAYLOR WITH DUSHUN, WHO AGAIN I SUBMIT TO YOU WHERE THE EVIDENCE IS MUCH GREATER WITH REGARDS TO MURDER, MR. TAYLOR, HIS THEORY IS THAT MO SANDERS IS THE SHOOTER. WHY, MR. FOREMAN, IS HIS -- IS THAT HIS THEORY?

YOU SEE, IF YOU BELIEVE THAT MO SANDERS IS THE SHOOTER BECAUSE THESE THREE WITNESSES HAVE INDICATED THAT HE'S NOT, THEN YOU CAN'T -- YOU CAN'T -- I MEAN, OBVIOUSLY THESE THREE WITNESSES ARE WRONG. THEY ARE WRONG AND THEY'VE MISSED THE WHOLE BOAT. HOW CAN YOU RELY -- HOW CAN YOU CONVICT SOMEBODY IF YOU BELIEVE MO SANDERS IS THE SHOOTER AND THESE THREE WITNESSES ARE TELLING THE TRUTH AND THESE THREE WITNESSES ARE WRONG. MR. TAYLOR'S THEORY IS THAT YOU JURORS WON'T CONVICT HIS CLIENT OF ANYTHING.

SO LET'S LOOK AT MO SANDERS. LET'S LOOK AT MO SANDERS AS THE SHOOTER. OKAY?

YOU'VE GOT THE TESTIMONY OF BRANDON McCANTS. ALL RIGHT? WHAT DID I TALK TO YOU ABOUT WHEN I WAS TALKING ABOUT DETERMINING WHICH VERSION OF EVENTS -- WHICH VERSIONS OF EVENTS IS CREDIBLE AND BELIEVABLE. YOU'VE GOT TO LOOK AT IS THERE CORROBORATING OR SUPPORTING EVIDENCE OR IS THEIR CONTRADICTORY EVIDENCE.

LADIES AND GENTLEMEN, THE IDEA OR THE PREMISE THAT MO SANDERS IS THE SHOOTER IS NOT CORROBORATED BY ANY EVIDENCE. IN FACT, ALL OF THE EVIDENCE CONTRADICTS, ALL OF IT.

FIRST, YOU'VE GOT THREE EYEWITNESSES, THREE PEOPLE THAT WERE FACING. REMEMBER, I ASKED THAT QUESTION? THEY'RE HERE FACING THE SHOOTER, NOT STANDING BACK HERE. THEY'RE FACING THE SHOOTER IN THIS WELL-LIT AREA. THREE

EYEWITNESSES. THREE EYEWITNESSES FACING THE SHOOTER IN A WELL-LIT AREA THAT SAY THE SHOOTER HAD A BLACK NORTHFACE JACKET ON. NOTHING OBSTRUCTING THEIR VIEW.

LADIES AND GENTLEMEN, LESS THAN TWO MINUTES AFTER THESE SHOTS WERE FIRED, HE'S APPREHENDED. THE PEOPLE WITH DARK CLOTHING ARE THE PEOPLE THAT WERE HANGING UP HERE AND IF YOU REMEMER THE TESTIMONY OF RASHON AND TONY KENNEDY, IS THAT HE WAS HANGING BACK OUT, HANGING BACK. SO WAS SHAKEEM WILSON, THEIR COUSIN. THEY WERE HANGING BACK. THAT'S WHY THEY'RE NOT CHARGED WITH MURDER BUT ACCESSORY AFTER THE FACT BASED ON EVIDENCE THAT YOU ALL DIDN'T HEAR ABOUT BECAUSE IT'S NOT RELEVANT TO THIS CASE, CERTAIN THINGS ARE DONE AFTER THE FACT THAT YOU DIDN'T HEAR ABOUT BECAUSE IT'S NOT RELEVANT.

THEY'RE CHARGED WITH LYNCHING, THE SAME THING, BECAUSE THEY WERE THERE AS PART OF A GROUP. THE SHOTS WERE FIRED. AS SOON AS THE SHOTS ARE FIRED, SERGEANT BOYD IS PARKED HERE. PARKED HERE, SHE IMMEDIATELY GOES TOWARD WHERE SHOTS WERE FIRED AND SEES THE YOUNG MAN RUNNING, NOT DISCARDING ANYTHING. THERE'S NO EVIDENCE THAT HE HAD A JACKET ON. AND SHE NEVER LOSES SIGHT OF HIM AND CLEARLY DOESN'T LOSE SIGHT OF HIM IN TIME FOR HIM TO GET RID OF IT, START TAKING OFF CLOTHES. BUT THERE'S NO EVIDENCE HE HAS A JACKET ON.

SHE SEMS HIM RUNNING IMMEDIATELY. HE WAS STOPPED, I

SUBMIT TO YOU, WITHIN TWO MINUTES OF THE INCIDENT AND WE GET A PICTURE OF HIM WEARING A GRAY SWEATSHIRT.

SO YOU'VE GOT THREE EYEWITNESSES THAT SAYS, "I'M STANDING RIGHT THERE AS CLOSE AS I AM TO YOU, THE FIRST TWO PEOPLE IN THE FIRST TWO ROWS. IN A WELL-LIT AREA AND THE TRIGGER MAN WAS WEARING A BLACK NORTHFACE COAT AND HE'S STOPPED TWO MINUTES LATER IN A GRAY SWEATSHIRT.

THAT'S THE FIRST EVIDENCE THAT CONTRADICTS. AND IT GETS MORE AND MORE.

SECONDLY, UNCONTRADICTED, THE SHOOTER HAD BRAIDS. HE'S NOT ONLY STOPPED, THEY PHOTOGRAPH HIM. MINI-AFRO, ACCORDING TO TONY, IS WHAT HE DESCRIBES THAT HAIRSTYLE. IT'S UNCONTRADICTED. OF ALL THE EVIDENCE AND TESTIMONY IN THE RECORD, IT'S UNCONTRADICTED THE SHOOTER HAD BRAIDS. HE'S STOPPED TWO MINUTES LATER WITH A MINI-AFRO AND THE PEOPLE IDENT -- THE PERSON IDENTIFIED WEARING THE BLACK NORTHFACE COAT THAT NIGHT IS LIMEL SIMS. SO SHOOTER HAD BRAIDS AND HE'S STOPPED WITHIN TWO MINUTES.

THAT ALONE BUT THERE'S MORE. THERE'S MORE. THEY TAKE A GUNSHOT -- I MEAN, WHAT'S THE SENSE IN TAKING A GUNSHOT RESIDUE SHORTLY AFTER AN INCIDENT IF YOU'RE NOT GONNA BELIEVE IN THE RESULTS. AND THE FACT OF THE MATTER IS THEY SWABBED HIS HANDS. HE WASN'T GIVEN AN OPPORTUNITY TO WASH HIS HANDS. THEY SWABBED HIS HANDS AND JOE POWELL, THE SUPERVISOR SAID, "NO, WHAT HE WAS TALKING ABOUT, THERE

WAS NO ELEMENTS, NOTHING CONSISTENT WITH HIM EITHER FIRING A GUN OR HANDLING A GUN AFTER IT'S BEEN FIRE". THE TESTS WERE NEGATIVE.

SO YOU'VE GOT THREE EYEWITNESSES SAYING THE SHOOTER IS IN A BLACK NORTHFACE COAT. HE'S CAUGHT TWO MINUTES LATER. THE SHOOTER'S GOT BRAIDS. HE'S GOT A MINI-AFRO AND THEY SWAB HIS HANDS AND IT'S NEGATIVE.

BUT THAT'S NOT ALL YOU HAVE. THERE'S EVEN MORE CONTRADICTION. YOU REMEMBER ODELL SUMTER, REMEMBER THE CORPORAL. I HAD HIM STAND UP FOR YOU. WHEN HE TOOK POSSESSION OF HIM -- HE NEVER -- WHEN SERGEANT BOYD SAW HIM, NEVER LEFT HER SIGHT AND SHE SUBDUED HIM, TOOK HIM TO INVESTIGATIVE DETENTION. PUT HER (SIC) IN THE BACKSEAT OF HIS -- PUT HIM IN THE BACKSEAT OF HIS (SIC) CAR. TOOK HIM BACK TO HASKILL DORM. TURN HIM OVER TO ODELL SUMTER AND HE NEVER LEFT ODELL'S SIGHT.

AND YOU REMEMBER WHAT ODELL, MR. SUMTER, SAID? "WHEN I GOT POSSESSION OF HIM, THIS IS WHAT HE WAS WEARING". WELL, WHAT IS THIS STUFF? HE WAS WEARING THE HAT ON HIS HEAD AND THE TWO BANDANAS? HE HAD ONE TIED AROUND HIS WRIST AND ONE TIED AROUND HIS ARM.

NOW, LADIES AND GENTLEMEN, ALL THE WITNESSES SAID THAT EVERYBODY OUT THERE EXCEPT FOR LUCIUS WAS SHOWING THEIR COLORS, THEIR FLAGS, THEY COULD SEE. HE'S NOT GONNA TIE RED TO HIS ARMS IF HE'S WEARING A COAT. THEY SAW HIM

WEARING THIS. SO THE ONLY LOGICAL THING IS -- ACCORDING TO THE DEFENSE IS THE SHOTS ARE FIRED, MO'S THE KILLER. HE TAKES TIME TO TAKE OFF HIS JACKET -- OH, I'M SORRY. HE'S WEARING THE RED ON THE JACKET BECAUSE EVERYONE SAYS THE RED WAS ON THE OUTSIDE. HE'S GOTTA UNDO THE TWO BANDANAS, TAKE OFF HIS COAT, SOMEHOW GET RID OF HIS COAT THAT NO ONE'S EVER FOUND BEFORE. THEN WITH ONE HAND, HE'S GOTTA RETIE ONE BANDANA ON HIS WRIST AND RETIE ANOTHER BANDANA ON HIS ARM. ALL WHILE HE'S RUNNING AWAY FROM THE SCENE BUT HE'S GOTTA -- YOU KNOW, HE'S GOTTA LOOK GOOD IF HE'S GONNA GET ARRESTED.

NOW, HOW INCREDIBLE IS THAT? YOU NOT ONLY HAVE THE THREE WITNESSES NOW SAYING THE SHOOTER WAS WEARING A BLACK NORTHFACE AND HE'S IN A GRAY SWEATSHIRT TWO MINUTES LATER. AND THE SHOOTER HAS BRAIDS AND HE'S GOT A MINI-AFRO AND HIS GUNSHOT RESIDUE TESTS ARE NEGATIVE. BUT HE'S STOPPED WITH THESE TWO THINGS TIED AROUND HIS WRIST AND HIS ARMS. HE DIDN'T HAVE TIME TO GET RID OF THE COAT AND RETIE IT.

AND THAT'S NOT ALL. THESE THREE WITNESSES, THEY'VE SEEN HIM BEFORE. IT GOES BACK TO MY THEORY. WHY WOULD THEY -- WHY WOULD THEY -- IF THEY'RE GONNA PUT IT ON LUCIUS AND DUSHUN, DON'T YOU THINK THEY'RE GONNA SAY ONE OF THEM -- IF THEY HAD SOME SORT OF BEEF, ONE OF THEM -- SOME OF THEM WOULD SAY ONE OF THOSE TWO GUYS IS THE TRIGGER MAN?

I MEAN, THEY DON'T LIKE ANY OF THESE GUYS BECAUSE THEY WERE INVOLVED ULTIMATELY IN THE DEATH OF THEIR FRIEND. WHY WOULD THEY PROTECT MO SANDERS? I MEAN, WHY WOULD THEY PROTECT HIM? THEY'VE SEEN HIM BEFORE AND THEY WERE ALL CONSISTENT. "THAT DUDE THAT WAS STOPPED THAT NIGHT, I'VE SEEN HIM BEFORE. HE WAS STANDING BACK. HE AIN'T THE TRIGGER MAN. HE WASN'T WEARING A BLACK NORTHFACE COAT. HE DIDN'T HAVE BRAIDS."

FIVE -- FIVE CATEGORIES OF EVIDENCE. AND YOU KNOW SOMETHING THAT'S INTERESTING? I AM THE PROSECUTOR THAT'S PROSECUTING THIS YOUNG MAN. EVENTUALLY THERE WILL BE TWELVE JURORS SITTING IN THIS BOX PLUS A NUMBER OF ALTERNATES DECIDING HIS GUILT OR INNOCENCE ON ACCESSORY AFTER THE FACT AND LYNCHING. AND I'M PROSECUTING THIS YOUNG MAN. BUT JUST AS MR. STRICKLER IS PROUD OF WHAT HE DOES, WE ARE PROUD OF WHAT WE DO. AND I'M NOT GONNA SIT HERE AND WATCH AS THIS YOUNG MAN GETS FRAMED FOR A CRIME HE DID NOT COMMIT.

I HAVE A DUTY TO PROTECT THE ACCUSED AS WELL. AND IT IS UNFAIR TO THIS YOUNG MAN -- I'M PROSECUTING HIM BUT HE'S NOT A SHOOTER AND HE'S NOT A KILLER. AND COULD YOU IMAGINE -- COULD YOU IMAGINE IF A PROSECUTOR TRIED TO BRING A MURDER CASE IN FRONT OF A JURY WITH THREE EYEWITNESSES THAT DON'T EVEN LIKE -- DON'T EVEN LIKE THE DEFENDANT, THREE EYEWITNESSES SAYING, "I'M STANDING THERE.

I'VE SEEN HIM BEFORE. THE LIGHTING'S GREAT. HE AIN'T THE TRIGGER MAN. THE TRIGGER MAN'S WEARING A BLACK LEATHER JACKET, NORTHFACE JACKET." HE'S CAUGHT TWO MINUTES LATER. THE TRIGGER MAN HAD BRAIDS. HE'S GOT A MINI-AFRO AND HIS GUNSHOT RESIDUE IS NEGATIVE.

CAN YOU IMAGINE IF A LAWYER, IF A PROSECUTOR TRIED TO BRING A CASE LIKE THAT IN? SHOULD BE DISBARRED AND RIGHTFULLY SO. BECAUSE THIS MAN IS NOT A SHOOTER.

WHY IS IT THAT MR. TAYLOR HAS GONE TO SUCH GREAT EXTREMES? YOU SEE, IF YOU TRY AND FOCUS ON MAURICE SANDERS -- IF YOU TRY AND FOCUS ON MAURICE SANDERS, THAT MEANS YOU'RE NOT FOCUSING ON THE CONDUCT AND ACTIONS OF DUSHUN STATEN OR LUCIUS STATEN.

NOW BRANDON McCANTS AS WELL. HE'S GOT -- HE'S GOT MO RUNNING THIS WAY YET MO'S CAUGHT WAY UP HERE. HE'S GOT HIM RUNNING BACK THIS WAY AND MO'S CAUGHT UP HERE. OKAY? HE SAYS HE SAW HIM IN THE RICHLAND COUNTY DETENTION CENTER. OF COURSE, THAT'S A ONE ON ONE. THAT'S NOT A -- THAT'S NOT A LINEUP. HE SAYS HE SEES HIM BUT HOW DO WE KNOW IF HE WAS IN THE SAME DORM LET ALONE THE SAME WING? THERE'S NO PAPERWORK TO SHOW THAT THEY WERE TOGETHER. AND HOW DO WE KNOW THEY EVEN SAW EACH OTHER? HOW DO WE KNOW THAT? COULD HAVE BROUGHT DOCUMENTS LIKE THEY BROUGHT DOCUMENTS IN.

DEPENDING ON WHEN I WAS ASKING QUESTIONS OR WHICH

DEFENSE LAWYER WAS, HE HAD THE POSITIONS OF CAR UP HERE AND A CAR UP HERE. AT TIMES HE HAD DUSHUN BETWEEN THE GRASS AND THE SIDEWALK. I WASN'T SURE WHAT THAT MEANT BUT BETWEEN THE GRASS AND THE SIDEWALK. AND THEN BACK BY THE GALAXY WHEN I ASKED HIM ON THE STATEMENT.

HE DIDN'T WAIT TO CALL INVESTIGATOR MEAD UNTIL MARCH. THAT'S WHAT HE TOLD ME ON CROSS-EXAMINATION. HE SAYS HE CALLS IN MARCH, TWO MONTHS AFTER HIS FRIENDS ARE INCARCERATED ON THIS. HE ACKNOWLEDGES TO ME THAT HIS FOCUS OF ATTENTION WASN'T ALWAYS ON BOTH LUCIUS AND DUSHUN. HE ACKNOWLEDGED THAT LUCIUS COULD HAVE SAID SOMETHING OR DONE SOMETHING AND HE WOULDN'T HAVE HEARD IT OR SEEN IT. HE ACKNOWLEDGED THAT -- THAT DUSHUN COULD HAVE DONE SOMETHING AND NOT SEEN IT. AND HE NEVER SAID DUSHUN WASN'T WEARING THIS.

AND MOST IMPORTANTLY, HE SAYS IT WAS A SEMI-AUTOMATIC PISTOL. AND THE FIRST QUESTION I ASKED HIM, YOU REMEMBER, IS -- THE FIRST QUESTION I ASKED HIM IS, "ARE YOU AS CERTAIN -- ARE YOU AS CERTAIN THAT IT WAS SEMI-AUTOMATIC PISTOL AS YOU ARE EVERYTHING YOU TOLD THIS JURY?" AND HE SAID, "YES."

WELL, LADIES AND GENTLEMEN, WE ALL KNOW, HE'S WRONG ABOUT THAT. I'M NOT SAYING HE'S NOT TELLING THE TRUTH. HE'S WRONG ABOUT THAT.

I MEAN, JUST AS MR. STRICKLER SAID IN HIS CLOSING, I

MEAN, BRANDON McCANTS, A FRIEND OF THESE GUYS IS TRYING TO HELP HIM OUT. SO IS HE GONNA SLIDE A CERTAIN WAY? JUST LIKE MR. STRICKLER SAID ABOUT HIS OWN CLIENT -- I THOUGHT THAT WAS -- THAT WAS VERY HONEST OF MR. STRICKLER, UNBELIEVABLY HONEST OF HIM WHEN HE TOLD YOU, "MAYBE MY CLIENT WASN'T COMPLETELY FORTHRIGHT WITH YOU. MAYBE MY CLIENT WAS STICKING UP FOR HIS LITTLE BROTHER, ONCE AGAIN." BECAUSE THE EVIDENCE AGAINST DUSHUN IS OVERWHELMING. THAT WAS EXTREMELY HONEST OF MR. STRICKLER. MAYBE LUCIUS, WHEN HE TOOK THAT STAND, IS STICKING UP FOR HIS LITTLE BROTHER, ONCE AGAIN. IT'S VERY RARE YOU'LL EVER SEE A LAWYER MAKE SUCH A PRESENTATION.

JUST A FEW MORE POINTS, LADIES AND GENTLEMEN.

LUCIUS AND DUSHAN STATEN, PART OF WHAT WE PRODUCED TO YOU WAS IT'S NOT ONLY WHAT'S IN THE MIND OF THE PERSON AT THE TIME BUT YOU CAN JUDGE SOMEBODY'S -- YOU CAN JUDGE THEIR INTENT OR THEIR INVOLVEMENT IN SOMETHING BY THEIR CONDUCT AFTER THE FACT.

I'M JUST GONNA THROW OUT A NUMBER OF PIECES OF EVIDENCE. YOU CAN ACCEPT OR REJECT. BUT I ASK YOU TO THINK ABOUT OVER THE NEXT FEW MINUTES, USE YOUR COMMONSENSE WHEN I ASK YOU THESE QUESTIONS.

LUCIUS TOOK THE STAND AND DUSHUN, YOU'VE GOT HIS STATEMENT, AND THEY BASICALLY SAID -- IN ESSENCE, THEY WERE ALMOST VICTIMS THEMSELVES. SO IN ESSENCE, UNDER

LUCIUS'S THEORY, HE -- UNDER HIS THEORY, HE'S AS MUCH OF A WITNESS AS THESE GENTLEMEN. AND THAT'S WHAT HE TESTIFIED TO.

WHEN HE GOT THERE THESE TWO OTHER GUYS WERE FIGHTING WITH LIMEL AND WITH MO. I MEAN, THE VICTIM WAS AND, YOU KNOW, HIS COUSIN AND HIS BROTHER WERE AWAY FROM THE SCENE AND HE WALKED UP TO THEM AND THE SHOTS WERE FIRED.

SO UNDER HIS THEORY, UNDER HIS POSITION, HE'S NOT INVOLVED. SO WHEN MR. STRICKLER SAID, "WELL, IT'S UNDERSTANDABLE". NO, IT'S NOT. IF WHAT LUCIUS TOLD YOU IS THE TRUTH, THEN HE IS IN THE SAME POSITION AS ALL THE BENEDICT COLLEGE STUDENTS OUT THERE AND ALL OF THE WITNESSES, IF WHAT HE TOLD YOU'S THE TRUTH BECAUSE HE DIDN'T KNOW THOSE TWO PEOPLE, HE CLAIMS. WELL, HE KNEW OF MO. SO IF HE'S JUST OUT THERE IN THE PARKING LOT, HE'S EVERY BIT AS INNOCENT AND AS VICTIMIZED AS EVERY OTHER BENEDICT COLLEGE STUDENT. THAT'S WHAT HE TESTIFIED TO. BECAUSE THE FIGHT, ACCORDING TO HIM, HE WASN'T INVOLVED IN IT AND DUSHUN WASN'T INVOLVED IN IT AND SHAKEEM WASN'T INVOLVED IN IT.

SO YOU GOTTA LOOK AT IT FROM THAT PERSPECTIVE. LUCIUS SAYS HE, HIS BROTHER AND COUSIN WERE MERE BYSTANDERS LIKE EVERYONE ELSE. THAT'S WHAT HE SAID.

SO WHEN YOU'RE JUDGING THAT CREDIBILITY, WHEN YOU'RE BACK THERE SAYING, "OKAY, LUCIUS SAYS HE WAS JUST THERE

LIKE ALL THE OTHER BENEDICT COLLEGE STUDENTS, IS THAT BELIEVABLE?"

YOU'VE GOT TO LOOK AT CONDUCT AND ACTIONS AFTER THE FACT. SO THINK ABOUT THIS, IF HE'S JUST -- IF HE WAS ALMOST A VICTIM AND HE DIDN'T KNOW THOSE TWO GUYS AT ALL, AND HE HANGS OUT IN THAT PLACE AND HE'S GOT FRIENDS THERE, WHY WOULD HE HAVE LEFT THE SEEN? WHY DIDN'T HE CALL 911? WHY? IF HIS FRIENDS HANG OUT THERE AS WELL, IF HE'D BEEN HANGING THERE FOR TWO WEEKS WITH SOME OF HIS EX-COWORKERS, WHY NOT CALL 911 IF YOU ARE JUST AN INNOCENT BYSTANDER AND IF YOU WERE ALMOST A VICTIM YOURSELF?

WHY IS IT WHEN HE HOOKS UP -- WHEN HE MEETS UP WITH REVEREND COPELAND AND WHEN HE MEETS UP WITH MS. GLIVENS -- THIS IS -- THIS IS INCREDIBLE, I SUBMIT TO YOU. IMAGINE IF YOU WERE -- IMAGINE YOU JUST WERE IN A PARKING LOT AND YOU WERE CLOSE BY WHEN GUNSHOTS ERUPTED AND SOMEBODY WAS SHOT AND ULTIMATELY KILLED, AND YOU LEAVE THE SCENE AND YOU GET A RIDE WITH -- YOU GO GET A RIDE WITH SOMEBODY, YOU NEVER MENTIONED IT. AND WHEN THEIR FRIEND, MS. GLIVENS, PICKS THEM UP, HE NEVER MENTIONS IT. AND THAT'S WHAT I ASKED HER.

AND THIS IS -- I CAN'T STAND THIS PROCESS THAT WE GET TO TALK AND YOU DON'T GET TO RESPOND. THERE'S NO INTERACTION. BUT AM I MISSING SOMETHING? IF YOU WERE TO DRIVE HOME TODAY, I SUBMIT TO YOU, FROM THIS COURTHOUSE,

IF YOU WERE TO WITNESS SOMETHING AS SIMPLE AS A CAR ACCIDENT, IF YOU WERE TO WITNESS SOMEBODY PURSE SNATCH, I SUBMIT EACH AND EVERY ONE OF YOU, WHEN YOU GOT HOME, YOU'D TELL SOMEBODY ABOUT IT. YOU'D TELL YOUR SPOUSE, YOUR BUDDY IF YOU'RE GOING TO HAVE BEER SOMEWHERE, IF YOU'RE GOING TO THE MOVIES WITH A GIRLFRIEND. "MAN, I SAW A BAD CAR ACCIDENT TODAY." "MAN, I SAW THIS GUY COME UP AND RIP THAT PURSE OUT OF THAT LADY'S HAND."

ISN'T THAT COMMON HUMAN REACTION? YET, THEIR TESTIMONY -- IT WASN'T ONLY LUCIUS'S TESTIMONY, IT WAS MR. TAYLOR'S ARGUMENT, SCARED, FEAR. THAT'S WHAT THEY WANT YOU TO BELIEVE. THAT LUCIUS SAID HE WAS SCARED. MR. TAYLOR ARGUED THAT DUSHUN WITNESSED THIS HORRIBLE EVENT FOR WHICH HE HAD NOTHING TO DO WITH. AND SEVERAL BLOCKS AWAY THEY MEET UP WITH A REVEREND WHO THEY EVEN CLAIM WAS ASKING THEM TO COME WITH THEIR CHURCH AND THEY NEVER MENTION IT?

THERE'S ONLY ONE LOGICAL REASON WHY. IF YOU'RE NOT INVOLVED, IF YOU'RE A BYSTANDER, WHAT WOULD REASONABLE PEOPLE SAY, "MAN, YOU WOULDN'T BELIEVE WHAT I JUST SAW", PARTICULARLY WITH SOMEONE LIKE MS. GLIVENS, THEIR FRIEND. AND MR. COPELAND DROPS THEM OFF -- DROPS THEM OFF AT THE EXXON STATION.

YOU KNOW, I SAID -- I WAS A LITTLE FACETIOUS. I SAID A THREE WOOD. I HOPE SOMEBODY OUT HERE GOLFS. BUT

THAT EXXON STATION IS WITHIN HALF A MILE OF THE CROSSROADS APARTMENTS. YOU COULD HAVE WALKED. WHY NOT HAVE HIM DRIVE TO THE APARTMENTS AND GO TO THE APARTMENT MANAGER LIKE EVERY APARTMENT COMPLEX HAS, AN APARTMENT MANAGER, TO GET A KEY? WHY WAS HE DROPPED OFF AWAY FROM THE APARTMENT AND WHY WHEN MS. GLIVENS CAME DID SHE NOT TAKE THEM TO THE APARTMENT?

WHY -- THEY WERE -- I SUBMIT TO YOU, THEY DIDN'T WANT TO GO TO THE APARTMENT BECAUSE PEOPLE SAW THEIR FACES. THEY SAW -- AND THEY SAW WHAT THEY WERE DOING AND THEY SAW WHAT THEY DID. SO THEY DON'T TALK ABOUT IT TO THE REVEREND AND THEY DON'T TALK ABOUT IT TO MS. GLIVENS AND THEY DON'T WANT TO GO ANYWHERE NEAR THEIR APARTMENT.

AND THE CAR. THIS MAY BE THE MOST INCREDIBLE. IF THEY ARE TOTALLY INNOCENT, IF THEY ARE VICTIMS OR WITNESSES, WHEN SHAKEEM COMES BACK -- I MEAN, A CAR. LUCIUS STATEN'S A YOUNG MAN, ONE OF HIS POSSESSIONS THEY OWN, I GUESS THE MOST -- THE MOST EXPENSIVE POSSESSION HE OWNED WAS THE CAR.

SHAKEEM COMES BACK WITH NO CAR AND HE DOESN'T GO LOOKING FOR THE CAR? HE'S NOT WORKING BECAUSE HE'S WAITING ON SOMETHING FROM DJJ. HE'S TWO MONTHS BACK ON HIS RENT. HE DOESN'T CARE ABOUT THE CAR? IS THAT -- IS THAT LOGICAL OR IS IT HE DOESN'T WANT TO HAVE ANYTHING TO DO WITH THE CAR?

IF HE IS JUST THERE AS AN INNOCENT BYSTANDER AS HE TESTIFIED TO AND HE IS ALMOST A VICTIM HIMSELF, WHY? WHY DOESN'T HE WANT TO HAVE NOTHING TO DO WITH HIS CAR. AND IF HE'S AN INNOCENT BY -- AND HE TALKED TO YOU ABOUT HOW HIS BEST FRIEND WAS MURDERED, HOW HE TESTIFIED AT THE GRAND JURY. HOW HE HIMSELF HAS BEEN SHOT. HOW HE'S BEEN STABBED. HOW HE WANTS TO BE A DJJ OFFICER.

IF HE WAS JUST AN INNOCENT PERSON, IF BOTH OF THEM WERE JUST INNOCENT, WHY DIDN'T THEY CALL CRIMESTOPPERS, EVEN IF THEY DIDN'T WANT TO GET INVOLVED LIKE MANNY PERDUE.

AND YES, THEY NEVER WENT BACK. MAYBE Y'ALL THINK THAT'S NOT IMPORTANT. I SUBMIT TO YOU THEY DIDN'T GO BACK BECAUSE THEY WERE INVOLVED. IF THEY'VE BEEN HANGING OUT THERE FOR TWO WEEKS AND HAD NOTHING TO DO WITH THIS AND THEIR FRIENDS WERE STILL THERE.

YET THEY END UP CALLING THE POLICE. AND WHAT'S THE PURPOSE FOR CALLING THE POLICE? THESE TWO INDIVIDUALS THAT HARDLY KNOW THE TWO PEOPLE THAT ARE INVOLVED IN THIS, LIMEL AND MO, THAT ALMOST GOT SHOT THEMSELVES, THESE TWO INNOCENT BYSTANDERS. LUCIUS CALLS THE POLICE TO FILE A FALSE POLICE REPORT TO REPORT HIS CAR STOLEN TWO HOURS BEFORE. WHAT OTHER REASON IS HE DOING THAT, LADIES AND GENTLEMEN?

AND THEN THE POLICE MEET WITH THEM AND WE KNOW WHAT

HAPPENS. BOTH OF THEM -- DUSHUN DOESN'T EVEN SAY HE'S LUCIUS'S BROTHER. THEY DON'T EVEN PUT THEMSELVES AT THE SCENE. WHAT INNOCENT BYSTANDER, WHAT WITNESS -- WHAT WITNESSES, WHEN ASKED BY THE POLICE, INDICATED THEY WEREN'T THERE, THEY HAVE NOTHING TO DO WITH THIS CRIME?

THAT'S ALL I'M GONNA TALK TO YOU ABOUT. THE FACTS AND EVIDENCE. JUST GOT A COUPLE OF CLOSING POINTS.

THE HAND OF ONE IS THE HAND OF ALL. WHEN TWO OR MORE PEOPLE ARE AT A SCENE, ACTING TOGETHER, AIDING AND ABETTING, THE LAW SAYS THE HAND OF ONE IS THE HAND OF ALL. TWO PEOPLE CAN BE GUILTY OF MURDER OR THREE OR FOUR, IF THERE ARE PEOPLE WORKING TOGETHER IN CONCERT WITH ONE ANOTHER AND THERE'S ONLY ONE GUN AND ONLY ONE BULLET, ONLY ONE TRIGGER MAN. BUT IF TWO OR MORE PEOPLE ARE TOGETHER, THE LAW SAYS THE HAND OF ONE IS THE HAND OF ALL. THAT IS THE LAW.

YOU KNOW THE INTERESTING THING ABOUT THIS, LADIES AND GENTLEMEN, IS THROUGHOUT THIS WHOLE THREE DAYS OF TESTIMONY, WHICH YOU DIDN'T HEAR ONE PIECE OF EVIDENCE OF ANY ANIMOSITY BETWEEN LIMEL SIMS AND PHILLIP LEE, NOT ONE. IN FACT, ALL OF THE WITNESSES SAID THEY HAD NEVER SEEN HIM THERE BEFORE. THAT NIGHT WAS THE FIRST TIME THEY'D EVER SEEN LIMEL SIMS. SO THERE WAS NO EVIDENCE OF ANY ANIMOSITY BETWEEN PHILLIP AND LIMEL SIMS.

AND WE KNOW THIS WASN'T AN ARMED ROBBERY. THAT

WASN'T THE MOTIVE. HE WASN'T THERE TO ROB SOMEBODY AND SHOT HIM. I SUBMIT THAT ONLY LEAVES ONE EXPLANATION. I SUBMIT LIMEL SIMS WAS A PUPPET. SOMEBODY WAS PULLING HIS STRINGS THAT NIGHT, LADIES AND GENTLEMEN, SOMEBODY OR SOMEBODIES. AND THE EVIDENCE SHOWS THAT THE PERSON THAT JUMPED IN THE ARGUMENT AND WHO WAS THE LEADER WAS LUCIUS STATEN AND THE PERSON THAT GAVE THE GUN WAS DUSHUN STATEN.

THAT'S UNCONTRADICTED, I SUBMIT TO YOU. LUCIUS WAS THE INITIATOR AND DUSHUN WAS THE ENABLER. HE HANDED THE INSTRUMENT OF DEATH TO LIMEL, THE EXECUTIONER. AND IN SOUTH CAROLINA, THAT'S THE HAND OF ONE IS THE HAND OF ALL AND THEY ARE GUILTY.

AND LIMEL SIMS, YES, HE'S THE SHOOTER. HE PUT THE BULLET THROUGH PHILLIP LEE'S BRAIN. HE DID. AND PHILLIP LEE LIED ON THAT SIDEWALK AND BLED TO DEATH ON THE CAMPUS OF HIS COLLEGE. AND THERE'S NOTHING YOU, MR. FOREMAN, OR ANYONE OF YOU, THERE'S NOTHING ANY ONE OF YOU CAN DO ABOUT THAT. NOTHING.

BUT YOU CAN DO SOMETHING. YOU CAN HOLD THESE TWO YOUNG MEN RESPONSIBLE, PARTICULARLY DUSHUN. BECAUSE IF HE NEVER WOULD HAVE HANDED THE GUN, WE WOULD NEVER BE HERE RIGHT NOW. YOU CAN HOLD THEM RESPONSIBLE.

IT WON'T BRING PHILLIP LEE BACK BUT IT WILL BE JUSTICE AND JUSTICE IS WHAT EACH AND EVERY ONE OF YOU REPRESENT, JUSTICE.

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, NOW THAT YOU'VE HEARD ALL THE -- WE'RE GONNA LOCK THE DOOR RIGHT NOW. SO IF YOU WANT TO LEAVE, YOU BETTER LEAVE RIGHT NOW.

(PAUSE.)

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, NOW THAT YOU'VE GOT ALL THE EVIDENCE IN THE CASE AND YOU'VE HEARD ALL THE ARGUMENTS OF THE ATTORNEYS, IT BECOMES MY JOB TO CHARGE YOU ON THE LAW AS IT APPLIES TO THE FACTUAL ISSUES IN THIS CASE.

CHARGE BY THE COURT:

NOW AT THE BEGINNING OF THE CASE I TOLD YOU THERE WERE TWO CHARGES AGAINST EACH DEFENDANT AND THESE CHARGES WERE BROUGHT TO THIS COURT BY MEANS OF INDICTMENTS. THESE ARE THE INDICTMENTS I HOLD IN MY HAND. I TOLD YOU THAT THEY PLED NOT GUILTY AND I ALSO TOLD YOU THAT THESE INDICTMENTS ARE NO EVIDENCE WHATSOEVER OF THEIR GUILT. THEY'RE SIMPLY THE MECHANISM BY WHICH CASES ARE BROUGHT TO THIS COURT. THEY'RE ALSO THE MECHANISM BY WHICH NOW YOU WILL WRITE YOUR VERDICT ON THE BACK OF THIS INDICTMENT FORM. THERE'S A PLACE THAT SAYS VERDICT AND THAT'S WHERE YOU'LL WRITE YOUR VERDICT AND YOUR VERDICT WILL BE GUILTY OR NOT GUILTY AS TO EACH COUNT FOR EACH INDIVIDUAL. AND YOU WILL TREAT EACH ONE OF THEM SEPARATELY AND DECIDE WHETHER OR NOT THE STATE HAS MET IT'S BURDEN OF PROVING

THEM GUILTY BEYOND A REASONABLE DOUBT.

NOW, THE STATE HAS THE BURDEN OF PROVING GUILT BEYOND A REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT. IT'S A CARDINAL AND IMPORTANT RULE OF LAW THAT A PERSON IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MADE AGAINST HIM MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH HE IS INDICTED UNLESS HIS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

NOW, THIS PRESUMPTION OF INNOCENCE DOES NOT CEASE WHEN YOU RETIRE BUT IT ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS APPEARANCE THROUGHOUT THIS TRIAL UNLESS YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

NOW, OUR SUPREME COURT HAS SAID THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT AND IT REMAINS WITH HIM AND ASSIGNS HIM TO THAT CLASS, THE INNOCENT, UNLESS THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED FROM HIS PERSON BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THIS IS NOT SIMPLY A MERE LEGAL THEORY. IT'S NOT JUST A LEGAL PHRASE. IT'S A SUBSTANTIAL RIGHT WHICH

EVERYONE IS ENTITLED TO.

NOW, I INSTRUCT YOU NOW AND EMPHASIZE TO YOU THAT THE FACT THAT A DEFENDANT DOES NOT TESTIFY ON HIS OWN BEHALF IN A CRIMINAL TRIAL IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS. YOU MUST NOT CONSIDER THE FACT THAT THE DEFENDANT HAS CHOSEN NOT TO TESTIFY WHEN YOU DETERMINE THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER, EITHER AGAINST OR FOR THE DEFENDANT.

A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, THE ASSERTION OF THAT CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. UNDER YOUR OATH YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSIONS WHATSOEVER FROM THE FACT THAT A DEFENDANT IN THIS CASE DID NOT TESTIFY. IT SHOULD NOT EVEN BE DISCUSSED IN YOUR JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS UPON THE STATE OF SOUTH CAROLINA. IT IS NOT THE BURDEN OF THE ACCUSED TO PROVE HIS INNOCENCE. THE BURDEN REMAINS UPON THE STATE TO PROVE GUILT BEYOND EVERY REASONABLE DOUBT.

ONCE AGAIN I TELL YOU THAT THE FACT THAT A DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN DETERMINING THE GUILT OR THE INNOCENCE OF A DEFENDANT OR IN ANY OTHER ASPECT OF YOUR DELIBERATIONS.

NOW, THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT. AND ANY REASONABLE DOUBT THAT YOU MAY HAVE IN YOUR DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE DEFENDANT. THE DEFENDANT IS ENTITLED TO ANY REASONABLE DOUBT.

A REASONABLE DOUBT MAY EXIST BECAUSE OF THE EVIDENCE AND TESTIMONY IN THE CASE OR FROM THE LACK OF EVIDENCE AND TESTIMONY IN THE CASE. IF YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OF THE DEFENDANT HE IS ENTITLED TO THAT DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL.

NOW, YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE. IT WAS MY DUTY TO RULE ON THE ADMISSIBILITY OF THE TESTIMONY BUT THE VALUE, PROBATIVE VALUE OF THE EVIDENCE IS ENTIRELY UP TO YOU. IT IS YOUR DUTY TO WEIGH AND CONSIDER THE EVIDENCE AND DETERMINE WHAT THE FACTS ARE FROM THE TESTIMONY AS YOU HEARD IT FROM THE WITNESSES ON THE STAND.

SINCE YOU ARE THE SOLE JUDGES OF THE FACTS, YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES. YOU MUST DECIDE WHETHER OR NOT TO BELIEVE THE WITNESSES. AND OF COURSE, YOU HAVE THE RIGHT TO BELIEVE ONE WITNESS AND DISBELIEVE ANOTHER, IF IN YOUR JUDGMENT THERE IS A SOUND REASON TO DO SO. YOU MAY ALSO BELIEVE ALL OR PART OF WHAT A WITNESS SAYS.

IN DETERMINING THE BELIEVABILITY OF WITNESSES YOU MAY TAKE INTO CONSIDERATION THEIR OPPORTUNITIES FOR OBSERVATION, THEIR ABILITY TO OBSERVE, THEIR KNOWLEDGE OF THE MATTERS THEY HAVE TESTIFIED AND ANY PREJUDICE OR BIAS OR FRIENDSHIP THEY MAY OR MAY NOT HAVE.

YOU MAY ALSO CONSIDER THEIR DEMEANOR OR APPEARANCE ON THE STAND AND, IN FACT, YOU MAY CONSIDER ANYTHING WHICH IN YOUR GOOD JUDGMENT TENDS TO SHOW WHETHER OR NOT A WITNESS IS TELLING THE TRUTH. ONCE YOU DETERMINE WHAT THE FACTS ARE, IT IS YOUR DUTY TO APPLY THE LAW AS I CHARGE YOU TO THOSE FACTS AND ARRIVE AT A VERDICT.

NOW, AS JURORS IN THIS CASE YOU HAVE CERTAIN FUNCTIONS AND RESPONSIBILITIES WHICH ARE DIFFERENT FROM MINE AS THE TRIAL JUDGE. I AM PROHIBITED BY THE CONSTITUTION FROM DISCUSSION THE FACTS OF THIS CASE WITH YOU AND IF YOU HAVE BEEN LEFT WITH ANY IMPRESSION WHATSOEVER THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE, YOU ARE TO DISREGARD THAT OPINION. IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO PASS UPON ALL ISSUES OF FACT PRESENTED IN THIS CASE.

NOW, IT'S MY DUTY TO CHARGE YOU THE LAW WHICH IS APPLICABLE TO THE ISSUES OF FACT PRESENTED IN THIS CASE. IT IS NOT A MATTER OF WHAT YOU THINK THE LAW OUGHT TO BE OR WHAT THE ATTORNEYS SAY THE LAW IS BECAUSE UNDER YOUR OATH YOU ARE TO TAKE THE LAW AS I GIVE IT TO YOU AND APPLY

IT TO THE FACTS AS YOU DETERMINE THEM TO BE.

NOW, IT IS ALSO MY DUTY TO SEE THAT THE TRIAL WAS CONDUCTED IN ACCORDANCE WITH THE RULES OF EVIDENCE REGARDING THE ADMISSIBILITY OF TESTIMONY FOR YOUR CONSIDERATION.

I WILL THEREFORE CHARGE YOU THAT YOU ARE NOT TO CONSIDER IN ANY WAY TESTIMONY WHICH HAS BEEN RULED OUT BY ME AS BEING INADMISSIBLE OR IN ANY WAY TO CONSIDER ARGUMENTS OF COUNSEL WHICH WAS DISALLOWED.

NOW, LET'S TALK ABOUT EVIDENCE. THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL. WE HAVE DIRECT EVIDENCE AND WE HAVE CIRCUMSTANTIAL EVIDENCE.

NOW, DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES WHICH INDICATE THE EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN THAT OF DIRECT EVIDENCE.

YOU SHOULD WEIGH ALL THE EVIDENCE IN THIS CASE. AND AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT,

YOU MUST FIND HIM NOT GUILTY.

NOW, IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR IMPRESSION BY A WITNESS. IT'S VALUE DEPENDS ON THE OPPORTUNITY THE WITNESS HAD TO OBSERVE THE PERSON IDENTIFIED AT THE TIME OF THE OFFENSE AND TO MAKE A RELIABLE IDENTIFICATION LATER. IT IS FOR YOU TO DETERMINE THE ACCURACY OF THE IDENTIFICATION TESTIMONY.

NOW, SOME OF THE FACTS THAT YOU MAY CONSIDER ARE THE OPPORTUNITY OF THE WITNESS TO VIEW THE SITUATION, THE WITNESS'S DEGREE OF ATTENTION, THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION, THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION AND THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION AND ALSO THE OPPORTUNITY OF THE WITNESS TO VIEW THE ACCUSED.

NOW, ANOTHER PRINCIPAL YOU NEED TO KEEP IN MIND, THE TESTIMONY OF A WITNESS MAY BE DISCREDITED OR IMPEACHED BY SHOWING THAT HE PREVIOUSLY MADE STATEMENTS WHICH ARE INCONSISTENT WITH HIS PRESENT TESTIMONY. THE EARLIER CONTRADICTORY STATEMENTS ARE ALSO ADMISSIBLE TO ESTABLISH THE TRUTH OF THESE STATEMENTS.

IT IS THE PROVINCE OF THE JURY TO DETERMINE THE CREDIBILITY, IF ANY, TO BE GIVEN TO THE EARLIER STATEMENTS AND TO BE GIVEN TO THE TESTIMONY OF A WITNESS WHO HAS BEEN IMPEACHED.

IF A WITNESS HAS SHOWN KNOWINGLY TO HAVE TESTIFIED

FALSELY CONCERNING ANY MATERIAL MATTER, YOU MAY CONSIDER THIS IN DETERMINING WHETHER TO TRUST SUCH WITNESS'S TESTIMONY IN OTHER PARTICULARS. YOU MAY REJECT ALL OF THE TESTIMONY OF A WITNESS OR GIVE ALL OR PART OF SUCH TESTIMONY THE CREDIBILITY YOU THINK IT SHOULD DESERVE.

NOW, THE THEORY IN THIS CASE, AS YOU'VE HEARD FROM THE ATTORNEYS, IS ONE OF ACCOMPLICE LIABILITY, SOMETIMES REFERRED TO AS AIDING AND ABETTING AND SOMETIMES REFERRED TO AS THE ACT OF ONE IS THE ACT OF ALL OR THE HAND OF ONE IS THE HAND OF ALL. HERE'S WHAT THE LAW SAYS.

THE LAWS SAYS THAT A PERSON WHO WAS PRESENT AT THE SCENE OF THE CRIME AND INTENTIONALLY OR THROUGH A COMMON PLAN AIDED, ABETTED OR ASSISTED IN THE COMMISSION OF THAT CRIME THROUGH SOME OVERT ACT IS GUILTY AS AN ACCOMPLICE. TO BE LIABLE AS AN ACCOMPLICE, THE DEFENDANTS MUST HAVE KNOWLEDGE OF THE PRICINPAL'S CRIMINAL CONDUCT.

NOW, MERE PRESENCE AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO ESTABLISH -- TO ESTABLISH GUILT AS AN ACCOMPLICE. NOW, WHEN WE SAY SOMEONE DOES SOMETHING INTENTIONALLY, THAT MEANS WILLFULLY, INTENDING THE RESULT WHICH ACTUALLY OCCURS AND NOT ACCIDENTALLY OR INVOLUNTARILY.

NOW A PARTY IS NOT LIABLE UNDER A THEORY OF ACCOMPLICE LIABILITY IF HE WITHDRAWS ENTIRELY FROM THE UNLAWFUL ACT BEFORE THE HOMICIDE IS COMMITTED.

NOW, WITH THAT IN MIND, LET ME EXPLAIN ' TWO CRIMES CHARGED IN THESE INDICTMENTS. AND ON THESE TWO DEFENDANTS ARE NOT CHARGED WITH ACTUALLY COMMITTING THE CRIME, THEY ARE CHARGED WITH AIDING AND ABETTING THE COMMISSION OF THESE CRIMES.

NOW, THE FIRST CRIME IS THE CRIME OF MURDER AND THEY CHARGE THAT THE DEFENDANTS ARE GUILTY IN THE AIDING -- AIDING AND ABETTING THE COMMISSION OF THE CRIME OF MURDER.

LET ME TELL YOU WHAT MURDER IS. MURDER IS THE UNLAWFUL KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED. HENCE, IN ORDER TO CONVICT ONE OF MURDER, THE STATE MUST NOT ONLY PROVE THE KILLING OF THE DECEASED BY THE KILLER, BUT THAT IT WAS DONE WITH MALICE AFORETHOUGHT AND SUCH PROOF MUST BE BEYOND A REASONABLE DOUBT.

MALICE AFORETHOUGHT IS AN ESSENTIAL ELEMENT IN THE CRIME OF MURDER. NOW, WHAT IS MALICE? MALICE IS DEFINED IN THE LAW OF HOMICIDE AS A TERM OF ART. THIS IS A TECHNICAL TERM IMPORTING WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL CAUSE. IT IS SOMETHING THAT SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM DEPRAVED SPIRIT, FROM A HEART DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.

THE WORDS EXPRESS OR INFERRED MALICE DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH THE ONLY KIND OF MALICE KNOWN TO MAN -- KNOWN TO THE LAW

BE SHOWN TO EXIST. THAT IS TO SAY, EITHER BY DIRECT EVIDENCE OR BY INFERENCE. AND MALICE MAY BE EXPRESSED WHERE PREVIOUS THREATS OF VENGEANCE OR LYING IN WAIT OR OTHER CIRCUMSTANCES SHOW DIRECTLY THAT AN INTENT TO KILL WAS ENTERTAINED.

MALICE IS SAID TO BE EXPRESSED WHERE THERE IS MANIFESTED A VIOLENT DELIBERATE INTENTIONAL -- INTENTION UNLAWFULLY TO TAKE AWAY THE LIFE OF ANOTHER. MALICE MAY BE INFERRED WHERE, THOUGH NO EXPRESSED INTENT TO KILL IS PROVED BY DIRECT EVIDENCE, IT MAY BE INFERRED FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED.

MALICE MAY BE INFERRED FROM THE WILLFUL DELIBERATE INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST OR LEGAL EXCUSE. IN OTHER WORDS, MALICE MEANS THE DOING OF A WRONGFUIL ACT INTENTIONALLY WITHOUT JUSTIFICATION OR LEGAL EXCUSE.

BUT EVEN IF FACTS PROVED ARE SUFFICIENT TO RAISE AN INFERENCE OF MALICE, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE AS TO WHETHER OR NOT MALICE HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

NOW, THE TERM AFORETHOUGHT, IN MALICE AFORETHOUGHT, WHICH ACCOMPANY THE MALICE IS BEST UNDERSTOOD IN CONTRAST

TO AFTERTHOUGHTS. SO LONG AS THE MALICE ACCOMPANIED THE ACT OF KILLING INSTEAD OF APPEARING AFTER THE ACT OF KILLING, IT IS SUFFICIENT TO ESTABLISH MALICE AFORETHOUGHT. THE MALICE DOES NOT HAVE TO EXIST FOR ANY APPRECIABLE PERIOD OF TIME BEFORE THE ACT OF KILLING HAS OCCURRED. THE MALICE MAY BE CONCEIVED AT THE MOMENT THE ACT OCCURS.

THE MAIN POINT HERE IS THERE MUST BE A CONJUNCTION BETWEEN THE MENTAL STATE OF MALICE AND THE ACT OF KILLING. EVEN IF THE DEFENDANT HAD MALICE AT SOME POINT IN THE PAST, HE HAS NOT COMMITTED MURDER UNLESS THAT MALICE EXISTED AT THE TIME OF THE KILLING.

NOW, THE LAW SAYS THAT IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON, THE IMPLICATION OF MALICE MAY ARISE. IF THE FACTS ARE PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL OTHER EVIDENCE IN THIS CASE AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

NOW, IN -- MURDER IS DEFINED AS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED. IN THE CONTEXT OF ACCOMPLICE LIABILITY FOR MURDER, THE ELEMENT OF MALICE WHICH MUST BE PROVED BY THE STATE IS THAT OF THE KILLER.

NOW THE SECOND CRIME WHICH THEY ARE CHARGED WITH BEING ACCOMPLICES TO IS THE CRIME OF LYNCHING. THIS IS A STATUTORY CRIME AND IT SAYS THAT ANY ACT OF VIOLENCE INFLICTED BY A MOB UPON THE BODY OF ANOTHER WHICH RESULTS IN THE DEATH OF THE PERSON SHALL CONSTITUTE THE CRIME OF LYNCHING IN THE FIRST DEGREE.

A MOB IS DEFINED FOR THE PURPOSE OF THIS STATUTE AS THE ASSEMBLAGE OF TWO OR MORE PERSONS WITHOUT COLOR OR AUTHORITY LAW, FOR THE PREMEDITATED PURPOSE AND THE PREMEDITATED INTENT OF COMMITTING AN ACT OF VIOLENCE UPON THE PERSON OF ANOTHER.

NOW, THE ASSEMBLAGE OF TWO OR MORE PERSONS NEED NOT HAVE FORMED WITH THE PREMEDITATED PURPOSE AND INTENT OF COMMITTING THE ACT OF VIOLENCE ON THE PERSON OF ANOTHER BUT MAY FORM THE REQUISITE PURPOSE AND INTENT AFTER THE PARTICIPANTS ARE ASSEMBLED.

NOW, IT IS PERMISSIBLE TO INFER THAT ALL PERSONS PRESENT AS MEMBERS OF A MOB, WHEN AN ACT IS VIOLENT -- ACT OF VIOLENCE IS COMMITTED, HAVE AIDED AND ABETTED THE CRIME AND ARE GUILTY AS PRINCIPALS. IF THE FACTS ARE PROVEN BEYOND A REASONABLE DOUBT, SUFFICIENT TO RAISE AN INFERENCE TO YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL OTHER EVIDENCE IN THIS CASE AND YOU SHOULD GIVE IT SUCH WEIGHT AS YOU DETERMINE

IT SHOULD RECEIVE.

NOW, MR. FOREMAN, LIKE I TOLD YOU BEFORE, I HAVE FOUR INDICTMENTS. ON THE BACK SIDE HERE IT SAYS, "VERDICT", AND THAT'S WHERE YOU'LL WRITE YOUR VERDICT. WE'RE GONNA SEND TWELVE JURORS TO THE JURY ROOM. YOUR VERDICT MUST BE UNANIMOUS. ALL OF YOU MUST AGREE AND ONCE THE JURY REACHES A VERDICT, IF YOU'LL FILL OUT THE VERDICT FORM AND WRITE GUILTY OR NOT GUILTY, SIGN YOUR NAME, KNOCK ON THE DOOR, WE'LL TAKE THE VERDICT. OKAY?

NOW, WHAT WE'LL DO, IS WE'RE GONNA -- I'M GONNA SEND YOU TO YOUR JURY ROOM. THE THREE ALTERNATES NEED TO STAY HERE. IF Y'ALL ORDERED LUNCH, YOUR LUNCH WILL BE HERE IN A MINUTE. I'LL PUT YOU IN ANOTHER JURY ROOM. IF YOU DIDN'T ORDER LUNCH, YOU'LL BE FREE TO GO.

THE REST OF YOU CAN GO BACK THERE. YOUR LUNCH SHOULD BE HERE SHORTLY. WE'RE GONNA TAKE ALL THESE EXHIBITS AND BRING ALL THESE TO YOU AND BRING THE INDICTMENTS BACK AND THEN Y'ALL CAN BEGIN YOUR DELIBERATIONS. OKAY?

SO IF YOU'LL GO TO YOUR JURY ROOM, WE'LL SEND EVERYTHING BACK.

(JURY OUT AT 2:02 P.M.)

THE COURT: DID ANY OF Y'ALL ORDER LUNCH?

(ALTERNATE JURORS RESPOND AFFIRMATIVELY.)

THE COURT: OKAY, IT'LL BE HERE. I'LL PUT YOU IN

ANOTHER BIG JURY ROOM DOWN HERE AND YOU CAN EAT LUNCH ON THE COUNTY.

ANY EXCEPTION TO THE CHARGE?

MR. GASSER: I TAKE IT YOU'RE NOT GONNA CHARGE THE EXAMPLE, MY STATE'S REQUEST TO CHARGE NUMBER FOUR?

(PAUSE.)

THE COURT: WHAT DOES IT SAY?

MR. GASSER: THE LANGUAGE FROM WILLIE EDWARD FRANKLIN.

THE COURT: OH, YEAH. NO, I THINK I COVERED IT ALL.

ANY EXCEPTIONS, MR. STRICKLER?

MR. STRICKLER: YOUR HONOR, ONE, I DON'T BELIEVE YOU CHARGED MERE SUSPICION. TWO, YOU TOUCHED BRIEFLY ON INDIVIDUAL CONSIDERATION TO THE INDIVIDUAL DEFENDANTS AS TO EACH INDIVIDUAL CHARGE. YOU BRIEFLY TOUCHED ON AT THE VERY START OF THE CHARGE. AT THE END YOU HELD UP ONE INDICTMENT AND SAY YOU GO BACK AND -- I'M JUST CONCERNED THAT THAT POINT WAS NOT EMPHASIZED. I'D SUBMIT IT WASN'T EMPHASIZED SUFFICIENTLY.

THE COURT: OKAY.

MR. STRICKLER: THAT'S MY REAL CONCERN.

THE COURT: ALL RIGHT, MR. TAYLOR?

MR. TAYLOR: YOUR HONOR, I DIDN'T HEAR A CHARGE ON CIRCUMSTANTIAL EVIDENCE.

THE COURT: OH, I GAVE THE GRIPPON CHARGE.

MR. TAYLOR: AND I DIDN'T HEAR MY REQUEST FOR CHARGE NUMBER SEVEN, NOT JUST MERE PRESENCE BUT MERE ASSOCIATION.

THE COURT: I THINK MY CHARGE SUFFICIENTLY COVERED THAT. IT'S NOTED. WE'LL MAKE A -- MAKE A PART OF IT.

MR. TAYLOR: THANK YOU.

THE COURT: ALL RIGHT. I THINK THEY UNDERSTAND WE'VE GOT FOUR CHARGES, TWO DEFENDANTS THAT ARE ALL STANDING ON THEIR OWN.

MR. STRICKLER: THANK YOU, SIR.

THE COURT: SO LET'S SEND THE INDICTMENTS BACK. CHECK ALL THE EXHIBITS AND MAKE SURE THOSE ARE IN ORDER. LET'S GET THEM ALL TO THE JURY AND LET THEM BEGIN THEIR DELIBERATIONS.

(INDICTMENTS AND EXHIBITS WERE SENT TO THE JURY TO BEGIN DELIBERATIONS AT 2:10 P.M.)

(COURT IS IN RECESS AWAITING A VERDICT.)

THE BAILIFF: COURT COME TO ORDER. ALL RISE, PLEASE.

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE COURT REPORTER, BUT OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. LET ME REMIND EVERYBODY IN THE COURTROOM, AS I TOLD YOU BEFORE THE JURY -- OR AFTER

THE JURY WENT OUT TO DELIBERATE, WE DON'T KNOW WHAT THE JURY'S VERDICT'S GONNA BE AND WE'RE NOT SURE WHAT'S GONNA HAPPEN HERE IN A FEW MINUTES. BUT IRREGARDLESS OF WHAT HAPPENS, I KNOW WE HAVE FAMILY MEMBERS AND FRIENDS ON BOTH SIDES OF THIS CASE, I DON'T WANT ANY NOISE, ANY OUTBURSTS, ANY EMOTIONS OR ANYTHING TO DISRUPT THIS COURTROOM.

YOU'LL NOTICE THE NUMBER OF DEPUTIES WE HAVE AROUND THIS COURTROOM, THEY'RE HERE FOR A PURPOSE AND ONE PURPOSE IS TO MAKE SURE YOU DON'T GET OUT OF LINE. IF YOU HAVE ANY EMOTION, YOU'RE GONNA HAVE TO EXPRESS IT OUTSIDE OF THIS COURTHOUSE. KEEP THAT IN MIND, NOW, BECAUSE WE'VE GOT LOTS OF PEOPLE HERE.

ALL RIGHT. TELL THE JURY WE'RE GONNA TAKE THE THREE VERDICTS THEY'VE GOT AND WE'LL DEAL WITH THE FOURTH ONE A LITTLE BIT LATER. TELL THEM TO SIGN THE VERDICT FORMS ON THOSE THREE CHARGES AND BRING THEM IN HERE.

(JURY IN AT 5:20 P.M.)

THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

THE COURT: THANK YOU. MR. FOREMAN, I UNDERSTAND Y'ALL HAVE REACHED VERDICTS ON THREE OUT OF FOUR INDICTMENTS; IS THAT TRUE?

MR. FOREMAN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. WOULD YOU HAND THOSE TO THE BAILIFF OR THE CLERK, PLEASE, ON JUST THOSE THREE?

ALL RIGHT. YOU WANT TO PUBLISH THE VERDICTS?

THE CLERK: YES, YOUR HONOR.

VERDICT OF THE JURY:

THE STATE OF SOUTH CAROLINA IN THE COUNTY OF RICHLAND, IN THE COURT OF GENERAL SESSIONS, INDICTMENT NUMBER GS-40-1148, THE STATE OF SOUTH CAROLINA VERSUS DUSHUN STATEN, INDICTMENT FOR MURDER. THE VERDICT IS GUILTY. SIGNED WILLIAM PEED ON THIS 1ST DAY OF MARCH, 2002.

2000-GS-40- -- I'M SORRY. 2000-GS-40-0786, THE STATE OF SOUTH CAROLINA VERSUS DUSHUN STATEN, INDICTMENT FOR LYNCHING IN THE FIRST DEGREE. THE VERDICT IS GUILTY. SIGNED WILLIAM PEED ON THIS 1ST DAY OF MARCH, 2002.

INDICTMENT NUMBER 2002(SIC)GS-40-0783, THE STATE OF SOUTH CAROLINA VERSUS LUCIUS STATEN, INDICTMENT FOR LYNCHING IN THE FIRST DEGREE. THE VERDICT IS GUILTY. SIGNED WILLIAM PEED ON THIS 1ST DAY OF MARCH, 2002.

MR. FOREMAN, ARE THESE YOUR VERDICTS AND THE VERDICTS OF THE ENTIRE JURY?

MR. FOREMAN: THEY ARE.

THE CLERK: THANK YOU.

THE COURT: ALL RIGHT. ANYTHING BEFORE I DEAL WITH THESE THREE INDICTMENTS?

MR. TAYLOR: NEED TO POLL THE JURY.

THE COURT: ALL RIGHT.

MR. STRICKLER: YES, SIR. I REQUEST POLLING IN

BEHALF OF LUCIUS STATEN.

THE COURT: LET'S POLL THE JURY, PLEASE.

THE CLERK: YES, YOUR HONOR.

LADIES AND GENTLEMEN OF THE JURY, I HAVE TWO QUESTIONS TO ASK YOU. THOSE QUESTIONS WILL BE: WAS THIS YOUR VERDICT AS I JUST PUBLISHED IT? AND IS IT STILL YOUR VERDICT AS OF RIGHT NOW?

MR. STRICKLER: I'D REQUEST INDIVIDUAL POLLING AS TO LUCIUS STATEN.

THE CLERK: THEY WILL BE ON BOTH DEFENDANTS. WHEN I CALL OUT YOUR NAME, PLEASE ANSWER YES OR NO.

WILLIAM PEED, WAS THIS YOUR VERDICT AS PERTAINING TO LUCIUS STATEN -- WERE THESE YOUR VERDICTS?

JUROR PEED: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS.

JUROR PEED: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR PEED: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR PEED: YES.

THE CLERK: GREGORY BURDEN, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR BURDEN: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR BURDEN: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR BURDEN: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR BURDEN: YES.

THE CLERK: DAN STEVENS, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR STEVENS: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR STEVENS: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR STEVENS: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR STEVENS: YES.

THE CLERK: MICHAEL HAYES, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR HAYES: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR HAYES: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR HAYES: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR HAYES: YES.

THE CLERK: JAMES WILLIAMS, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR WILLIAMS: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR WILLIAMS: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR WILLIAMS: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR WILLIAMS: YES.

THE CLERK: KENNETH McCULLOUGH, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR McCULLOUGH: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR McCULLOUGH: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR McCULLOUGH: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR McCULLOUGH: YES.

THE CLERK: CHARMELLE CASTRO, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR CASTRO: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR CASTRO: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR CASTRO: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR CASTRO: YES.

THE CLERK: QUEEN WESTON, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR WESTON: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR WESTON: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR WESTON: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

(NO RESPONSE.)

THE CLERK: ARE THEY STILL YOUR VERDICTS---

JUROR WESTON: YES.

THE CLERK: I'M SORRY IF I DID NOT HEAR YOU.

DOUGLAS WHITENER, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR WHITENER: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR WHITENER: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING

TO DUSHUN STATEN?

JUROR WHITENER: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR WAGNER: YES.

THE CLERK: LARRY BRYANT, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR BRYANT: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR BRYANT: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR BRYANT: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR BRYANT: YES.

THE CLERK: STEVEN BEARD, WERE THESE YOUR VERDICTS AS PERTAINING TO LUCIUS STATEN?

JUROR BEARD: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR BEARD: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR BEARD: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR BEARD: YES.

THE CLERK: AUDREY DAVIS, WERE THESE YOUR VERDICTS

AS PERTAINING TO LUCIUS STATEN?

JUROR DAVIS: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR DAVIS: YES.

THE CLERK: WERE THESE YOUR VERDICTS AS PERTAINING TO DUSHUN STATEN?

JUROR DAVIS: YES.

THE CLERK: ARE THEY STILL YOUR VERDICTS?

JUROR DAVIS: YES.

THE CLERK: THANK YOU. THE JURY HAS BEEN POLLED, YOUR HONOR.

THE COURT: ANYTHING ELSE BEFORE I DEAL WITH THESE INDICTMENTS?

MR. STRICKLER: NOTHING REQUIRING THE PRESENCE OF THE JURY.

MR. TAYLOR: NO.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M GONNA ASK YOU TO GO BACK TO YOUR JURY ROOM FOR A FEW MINUTES AND THEN WE'RE GONNA DECIDE WHAT WE'RE GONNA DO ON THE OTHER INDICTMENT.

SO JUST PLEASE GO BACK AND WE'LL TELL YOU WHAT TO DO IN JUST A SECOND.

(JURY OUT AT 5:26 P.M.)

THE COURT: Y'ALL WANT TO COME UP HERE A MINUTE?

MR. GASSER: BEG THE COURT'S INDULGENCE ONE MOMENT.

(PAUSE.)

THE COURT: WE MIGHT NEED TO CALL EMS? WHY DOESN'T SOMEBODY CALL EMS?

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE COURT REPORTER, BUT OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: ALL RIGHT, MR. SOLICITOR, I THINK YOU'VE REACHED A DECISION ON WHAT YOU WANT TO DO, YOU AND MR. STRICKLER, ON THE REMAINING CHARGE WHICH THE JURY HAS NOT REACHED A VERDICT ON?

(PAUSE.)

THE COURT: ALL RIGHT, DUE TO THE CIRCUMSTANCES HERE IN THE COURTROOM, WE'RE GONNA DEFER SENTENCING TILL 9:00 OR 9:30 MONDAY MORNING. SO ALL THE ATTORNEYS CAN HAVE THE DEFENDANTS BACK 9:30 MONDAY MORNING.

AND, MR. GASSER, I THINK YOU'VE TAKEN THE POSITION ON THE FOURTH CHARGE?

MR. GASSER: YOUR HONOR, AFTER CONSIDERABLE THOUGHT AND CONSULTATION WITH OTHER MEMBERS OF THE SOLICITOR'S STAFF, GIVEN THE FACT THAT THIS JURY HAS FOUND ONE DEFENDANT GUILTY OF BOTH CHARGES AND FOUND LUCIUS STATEN GUILTY OF---

THE COURT: I DON'T THINK THIS HAS ANYTHING TO DO WITH -- YOU WANT TO READ THIS? LET'S GO AHEAD AND HEAR -- FINISH SAYING WHAT YOU WERE SAYING.

MR. GASSER: I HAVE ALSO HAD AN OPPORTUNITY TO CONSULT WITH PHILLIP LEE'S FAMILY AND I HAVE EXPLAINED TO THEM WHAT HAS GONE ON AND THE LEGAL RAMIFICATIONS OF MISTRIAL. AND THEY CONCUR AND ARE IN AGREEMENT WITH THE SOLICITOR'S OFFICE'S DECISION AT THIS TIME. OUR DECISION HAS BEEN ACCEPTED BY MR. STATEN THROUGH HIS ATTORNEY, MR. STRICKLER, GIVEN THE FACT THIS JURY HAS CONVICTED HIM OF LYNCHING, GIVEN THE FACT THAT THE STATE CONCEDED THAT HE WAS OF A MUCH GREATER -- LESSER CULPABILITY ON THE HOMICIDE CHARGE, WE WOULD CONSENT TO A MISTRIAL AT THIS TIME.

THE COURT: ALL RIGHT, MR. STRICKLER. HAVE YOU TALKED TO YOU CLIENT ABOUT THAT?

MR. STRICKLER: I'VE TALKED WITH MY CLIENT -- ATTEMPTED TO TALK WITH HIM. HE'S---

(PAUSE.)

MR. STRICKLER: YES, SIR. THANK YOU VERY MUCH. I BELIEVE HE CONSENTS.

THE COURT: HE DID CONSENT. OKAY. WE'LL DECLARE A MISTRIAL IN THE HOMICIDE CHARGE ON MR. LUCIUS STATEN. AND WE'LL HAVE SENTENCING AT 9:30 MONDAY MORNING.

Y'ALL WANT TO COME UP HERE.

(A BENCH CONFERENCE IS HAD AT THIS TIME IN THE PRESENCE OF THE COURT REPORTER, BUT OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: EVERYBODY THAT WANTS TO LEAVE, Y'ALL CAN LEAVE. WE'RE THROUGH.

COURT REPORTER: FOR THE RECORD, THE JUDGE IS GOING TO THE JURY ROOM TO DISMISS THE JURY.

(COURT'S EXHIBIT NUMBER FOUR, NOTE FROM A JUROR TO THE COURT; AND,

(COURT'S EXHIBIT NUMBER FIVE, NOTE FROM A JUROR TO THE COURT; AND,

(COURT'S EXHIBIT NUMBER SIX, NOTE FROM A JUROR TO THE COURT; AND,

(COURT'S EXHIBIT NUMBER SEVEN, NOTE FROM A JUROR TO THE COURT; ARE NOW MARKED FOR IDENTIFICATION.)

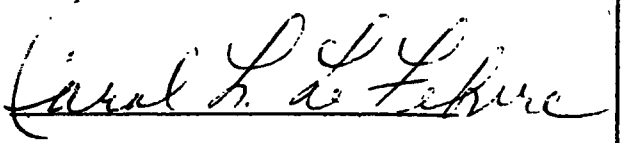
--- END OF VOLUME NUMBER FOUR AND TRANSCRIPT OF RECORD---

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

I, THE UNDERSIGNED, CAROL L. LeFEBVRE, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 25TH, 26TH, 27TH, AND 28TH DAYS OF FEBRUARY, 2002 AND THE 1ST DAY OF MARCH, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO

SEPTEMBER 13TH, 2002



CAROL L. LeFEBVRE,CVR

FILE COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA :
:
-vs- : 02-GS-40-786, 1148
:
DUSHON "MALIK ALI" STATEN :

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA :
:
-vs- : 02-GS-40-783
:
LUCIOUS STATEN :

MONDAY, MARCH 4, 2002
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE L. HENRY MCKELLAR, JUDGE, AND A JURY.

A P P E A R A N C E S:

JONATHAN GASSER, DEPUTY SOLICITOR
ROBERT HOOD, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

DAVID TAYLOR, ESQUIRE
ATTORNEY FOR DEFENDANT DUSHON STATEN

DOUGLAS STRICKLER, ESQUIRE
ATTORNEY FOR DEFENDANT LUCIOUS STATEN

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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EXHIBITS

(NO EXHIBITS WERE INTRODUCED DURING THIS PORTION OF THE TRANSCRIPT OF RECORD.)

MR. STRICKLER: MAY IT PLEASE THE COURT, YOUR HONOR. I HAVE JUST A COUPLE MATTERS I NEED TO TAKE CARE OF PRIOR TO PROCEEDING WITH SENTENCING, DIDN'T HAVE AN OPPORTUNITY TO GO THROUGH ON FRIDAY.

I'D ASK THE COURT TO NOTE AND CONSIDER AS IF I HAD MADE AT THE END OF THE DEFENSE CASE A RENEWAL OF MY DIRECTED VERDICT MOTIONS MADE AT THE END OF THE CASE FOR THE STATE.

I JUST ASK THAT YOU CONSIDER IN REFERENCE TO THE MOTIONS, THE ONLY THING ADDITIONAL I WOULD ASK THAT YOU CONSIDER WOULD BE THE FACT THAT YOU AT THAT POINT IN TIME HAD HAD THE OPPORTUNITY TO CONSIDER THE TESTIMONY OF LUCIOUS STATEN WITH REGARD TO THOSE MOTIONS.

SO I WOULD ASK THAT YOU PLEASE NOTE THOSE AT THIS TIME AND CONSIDER THOSE AS IF I HAD MADE A RENEWAL FOR A DIRECTED VERDICT MOTIONS AT THE END OF THE DEFENSE CASE.

THE COURT: MR. GASSER, YOU DON'T HAVE ANY OBJECTION TO THAT, DO YOU?

MR. GASSER: NO, SIR.

THE COURT: THINGS GOT MOVING PRETTY FAST FRIDAY. WE NEVER GAVE YOU A CHANCE TO MAKE YOUR MOTION.

MR. STRICKLER: YES, SIR.

THE COURT: SO WE WILL MARK YOUR MOTIONS AS BEING HEARD AT THE END OF THE DEFENSE CASE -- AND FOR YOU TOO.

MR. TAYLOR: AND MINE LIKEWISE, YOUR HONOR.

THE COURT: HIS LIKEWISE. OKAY. ANYTHING ELSE? WHAT ABOUT POST-TRIAL MOTIONS?

MR. STRICKLER: POST-TRIAL MOTIONS. YES, YOUR HONOR. IN THAT REGARD I'D JUST ASK THAT -- I WOULD MOVE FOR A NEW TRIAL IN THIS MATTER, ASK YOUR HONOR TO REVISIT PREVIOUSLY MADE MOTIONS IN REGARD TO THIS CASE, AND EXERCISE THE RIGHT TO GO AHEAD AND GRANT A NEW TRIAL IN THIS MATTER, CONSIDERING THE EVIDENCE IN ITS TOTALITY.

I'D ASK THAT ON BEHALF OF LUCIOUS STATEN.

THE COURT: ALL RIGHT. MR. TAYLOR.

MR. TAYLOR: I WOULD ASK THE SAME THING, YOUR HONOR.

THE COURT: ALL RIGHT. BASED ON A RULING I MADE AT THE END OF THE STATE'S CASE, I'LL DENY BOTH MOTIONS FOR DIRECTED VERDICT AND BOTH MOTIONS FOR A NEW TRIAL.

MR. STRICKLER: THANK YOU, SIR, THAT'S ALL I HAVE PRIOR TO SENTENCING.

MR. TAYLOR: AND THAT'S ALL I HAVE AS WELL.

THE COURT: ALL RIGHT. MR. SOLICITOR.

MR. GASSER: MAY IT PLEASE THE COURT, YOUR HONOR. YOU'VE HEARD ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE DEATH OF PHILIP LEE.

I ALSO, WITH THE CONSENT OF BOTH DEFENSE COUNSEL, HAVE HAD THE OPPORTUNITY TO PROVIDE THE COURT PRIOR TO COMMENCING THIS HEARING WITH TWO VICTIM IMPACT STATEMENTS.

PURSUANT TO THE VICTIM'S RIGHTS CONSTITUTIONAL

AMENDMENT AND STATUTORY LAW, PHILIP LEE'S MOTHER AND GRANDMOTHER WERE GIVEN AN OPPORTUNITY TO SPEAK AT THIS HEARING. THEY ARE PRESENT IN THE COURTROOM. THEY HAVE BEEN PRESENT THROUGHOUT THE PROCEEDINGS. THEY HAVE DECLINED TO ACTUALLY SPEAK TO THE COURT, AND THEY WANTED THEIR VICTIM IMPACT STATEMENTS TO SPEAK ON THEIR BEHALF.

AND SO I WOULD NOTE FOR THE RECORD THAT I'VE PROVIDED THE COURT COPIES OF THE VICTIM IMPACT STATEMENTS OF MS. FELDER AS WELL AS DEBRA LEE.

AND I KNOW THIS COURT HAS HAD OPPORTUNITY BEFORE THE HEARING ACTUALLY BEGAN THIS MORNING TO REVIEW THOSE VICTIM IMPACT STATEMENTS.

YOUR HONOR, THE ONLY OTHER THING I WOULD ADD. THIS COURT HAS HEARD THE FACTS AND CIRCUMSTANCES. ONCE AGAIN, WHAT 20 YEARS AGO WOULD HAVE AMOUNTED TO A FIST FIGHT, ENDS IN THE DEATH OF A YOUNG MAN AND TWO OTHER YOUNG MEN GOING TO PRISON. AND THIS IS JUST AN ABSOLUTE, SENSELESS TRAGEDY BROUGHT ON BECAUSE OF ACCESS TO A FIREARM.

I WOULD ALSO NOTE THAT PARTICULARLY SINCE PHILIP LEE'S MOTHER IS IN THE COURTROOM, SINCE THIS INCIDENT OCCURRED AND THROUGHOUT THE LAST 13 MONTHS THERE HAS BEEN SIGNIFICANT PUBLICITY SURROUNDING PHILIP LEE'S DEATH. AND THE WORD GANG AND DRUGS HAVE BEEN BROUGHT OUT.

I UNDERSTAND, YOUR HONOR, THAT THIS COURT HAD A RULING INDICATING THAT NO EVIDENCE OF ANY TYPE OF DRUG USE OR DRUG

DISTRIBUTION WOULD BE PRESENTED BEFORE THE JURY. AND, OF COURSE, THE STATE FOLLOWED THAT RULING.

I WOULD LET THE COURT KNOW THAT THERE WERE SEVERAL WITNESSES THE STATE DID CALL AND WOULD HAVE CALLED WHICH WOULD HAVE INDICATED THAT INITIALLY THE ARGUMENTS BETWEEN THE GROUP -- BETWEEN THE DEFENDANTS AND THEIR ASSOCIATES AS WELL AS SEVERAL OTHER STUDENTS -- NOT PHILIP LEE -- INVOLVED A BATTLE OVER TURF, DRUG TURF.

I SAY THAT BECAUSE I THINK PHILIP LEE'S MEMORY DESERVES AN EXPLANATION AT THE HEARING FOR THE TWO INDIVIDUALS WHO ARE GETTING READY TO BE SENTENCED.

AT NO TIME, YOUR HONOR, DURING THIS INVESTIGATION WAS THERE EVER ANY EVIDENCE THAT PHILIP LEE HIMSELF USED DRUGS OR THAT PHILIP LEE HIMSELF SOLD DRUGS.

THERE WERE SEVERAL STUDENTS THAT WOULD HAVE ADMITTED UNDER OATH THAT THEY SOLD DRUGS IN THAT PARKING LOT BEFORE THE CHRISTMAS HOLIDAYS. AND THE DRUGS WE'RE TALKING ABOUT IS MARIJUANA.

I DON'T THINK IT'S AN INDICTMENT OF BENEDICT COLLEGE THAT THERE WERE STUDENTS USING OR SELLING DRUGS. I BELIEVE, I SUBMIT TO THIS COURT, THERE'S NOT A COLLEGE CAMPUS IN THIS COUNTRY THAT DOESN'T HAVE MARIJUANA USE ON IT.

BUT I WANTED WITH PHILIP LEE'S MOTHER IN THE COURTROOM, I BELIEVE -- AND HIS GRANDMOTHER, THAT THEY

DESERVED AN EXPLANATION ON THE RECORD.

THE STATE'S POSITION ALL ALONG WAS THAT THE INITIAL HOSTILITY BETWEEN THESE DEFENDANTS AND THEIR FRIENDS INVOLVED HOSTILITY OVER TURF WAR THERE AT THE DORM PARKING LOT. BUT AT NO TIME WAS PHILIP LEE HIMSELF ACTIVELY ENGAGED -- AND I UNDERSTAND DEFENSE ATTORNEYS HAVE A DIFFERENT SPIN ON IT. I'M NOT HERE TO ARGUE THE FACTS, I'M JUST IN THE MEMORY OF PHILIP LEE IN THE PRESENCE OF HIS MOTHER AND GRANDMOTHER -- PUT THAT ON THE RECORD.

YOUR HONOR, WE WOULD -- AS WE DO IN ALL CASES -- WE WOULD RESPECTFULLY DEFER SENTENCING TO THIS COURT. WE UNDERSTAND THIS COURT HAS SEEN THE FACTS, HEARD THE FACTS. AND WHATEVER SENTENCE YOU DEEM APPROPRIATE FOR MR. DUSHON STATEN AND MR. LUCIOUS STATEN, THE STATE WILL HAVE NO OBJECTION TO IT.

THE COURT: OKAY. I HAVE READ THE VICTIM IMPACT STATEMENTS OF MS. LEE AND MS. FELDER.

(PAUSE.)

MR. STRICKLER: BEG THE COURT'S INDULGENCE, YOUR HONOR. I'M BRIEFLY REVIEWING THESE MYSELF TO SEE IF THERE'S ANYTHING I WISH TO RESPOND TO.

(PAUSE.)

THE COURT: ALL RIGHT. MR. STRICKLER, DO YOU WANT TO GO FIRST?

MR. STRICKLER: YES, SIR, THANK YOU VERY MUCH, YOUR

HONOR.

FIRST OF ALL, THANK YOU FOR DELAYING THESE PROCEEDINGS UNTIL THIS MORNING. I DON'T THINK LUCIOUS WAS IN CONDITION TO STAND BEFORE AT THAT POINT IN TIME, AND I DON'T THINK I WAS AT THAT POINT IN TIME.

I DON'T HAVE MUCH TO ADD. THIS IS DIFFERENT FROM AN INDIVIDUAL STANDING BEFORE YOU ENTERING PLEAS OF GUILTY, IN THAT YOU'VE HAD THE OPPORTUNITY, ESPECIALLY, AS THE TRIAL CAME DOWN IN THIS CASE, TO HEAR FROM LUCIOUS, TO HEAR FROM HIM PRETTY COMPLETELY.

I THINK, YOUR HONOR -- WELL, I KNOW YOUR HONOR HAD AN OPPORTUNITY TO HEAR FROM ME. AND YOU KNOW HOW I FEEL ABOUT THIS. I HAVE ATTEMPTED TO GO AHEAD AND PRESENT NOT ONLY WHAT LUCIOUS HAD TO SAY ABOUT THE INCIDENT, I ALSO ATTEMPTED TO SUPPLY THIS COURT WITH AN EXPLANATION AS I SEE IT REGARDING HIS ACTIONS IN THIS INCIDENT.

I HOPE NOTHING WAS SAID DURING THE COURSE OF THE TRIAL THAT WOULD IN ANY WAY INDICATE THAT WE FELT MR. LEE'S DEATH WAS WARRANTED. CERTAINLY DON'T REMEMBER ANYTHING BEING SAID LIKE THAT. CERTAINLY DON'T SAY ANYTHING LIKE THAT AT THIS TIME. FAR FROM IT.

LUCIOUS TOLD THE JURY EARLY ON THAT HE WAS SADDENED BY MR. LEE'S DEATH AND SADDENED BY THE SITUATION HE WAS IN, THAT IT'S HAD AN IMPACT ON TWO FAMILIES, ESSENTIALLY ECHOING WHAT MR. GASSER SAID EARLY ON IN THIS CASE.

I, IN MY PROFESSIONAL CAREER, REPRESENT WHOEVER I AM ASSIGNED TO REPRESENT. I DON'T HAVE THE LUXURY OF PICKING AND CHOOSING. I TRY THOSE CASES THAT END UP AS TRIALS. I TRY CASES FOR A VARIETY OF REASONS. SOME TIMES THEY HAVE TO BE TRIED. SOME TIMES PARTIES CAN'T AGREE ON AN APPROPRIATE DISPOSITION. SOME TIMES CLIENTS INSIST UPON IT, DESPITE MY EFFORTS. SOME TIMES -- WELL, THEY GET TRIED FOR A VARIETY OF REASONS.

I HAVE CONTACT WITH -- OVER THE PAST 21 YEARS -- A WIDE VARIETY OF INDIVIDUALS CHARGED WITH CRIMINAL ACTS.

I CAN HONESTLY TELL THIS COURT THAT SELDOM IN THAT PERIOD OF TIME HAVE I BEEN AS IMPRESSED WITH THE YOUNG MAN AS I HAVE BEEN DURING THE BRIEF TIME I'VE HAD TO GET TO KNOW LUCIOUS STATEN.

HE'S AN IMPRESSIVE PERSON. I THINK HE OFFERS SOMETHING TO SOCIETY, AND CAN OFFER SOMETHING IN ADDITION TO SOCIETY.

I'D ASK YOU TO CONSIDER THAT IN IMPOSING SENTENCE.

I THINK THAT'S WHAT I HAVE TO SAY.

THE COURT: WOULD YOU LIKE TO ADD ANYTHING, MR. STATEN? WOULD YOU LIKE TO SAY SOMETHING?

DEFENDANT LUCIOUS STATEN: NO, SIR.

THE COURT: ALL RIGHT. MR. TAYLOR.

MR. TAYLOR: THANK YOU VERY MUCH. YOUR HONOR, AS YOU KNOW, I WAS APPOINTED BY THE STATE IN THIS CASE TO

REPRESENT MR. DUSHON STATEN. AND I WILL SAY THAT THOUGH IT WAS A LOT OF WORK, I DO NOT REGRET IT FOR ONE MOMENT.

MR. STATEN HAS STRUCK ME AS A FINE YOUNG MAN. TODAY IS HIS 24TH BIRTHDAY. HE WAS AT THE TIME VISITING FROM NEW YORK, AND PREPARING TO RETURN TO SCHOOL TO FURTHER HIS EDUCATION WHILE WORKING WITH TEMPORARY SERVICES IN THE STATE OF NEW YORK.

THOUGH YOU DID NOT HEAR FROM HIM ON THE WITNESS STAND, AS YOU KNOW, I INFORMED THE COURT IN CHAMBERS THAT ESSENTIALLY THE JURY -- THE COURT AND THE JURY HAD HEARD THE VAST, VAST MAJORITY OF WHAT HE WOULD HAVE TO SAY THROUGH THE TESTIMONY OF HIS BROTHER. HIS TESTIMONY WAS VIRTUALLY THE SAME.

I WOULD ASK YOUR HONOR TO CONSIDER THE FACT THAT HE IS VERY YOUNG, THAT HE'S HAD NO PREVIOUS VIOLENT HISTORY WHATSOEVER.

AND I WOULD ASK YOUR HONOR TO CONSIDER ALL OF THAT AND IMPOSE THE MINIMUM SENTENCE THAT YOUR HONOR FEELS THAT YOU CAN IN GOOD CONSCIENCE IMPOSE.

THE COURT: ALL RIGHT. MR. STATEN, WOULD YOU LIKE TO SAY ANYTHING?

DEFENDANT DUSHON STATEN: NO, SIR.

THE COURT: ANYTHING ELSE FROM THE STATE?

MR. GASSER: NO, SIR.

THE COURT: ALL RIGHT. ON MR. DUSHON STATEN, ON THE

CHARGE OF MURDER, I'M GOING TO SENTENCE YOU TO THE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS. I'M GOING TO SENTENCE YOU ON THE LYNCHING CHARGE FOR A PERIOD OF 10 YEARS. WE'RE GOING TO RUN THOSE CONCURRENT.

HOW MANY DAYS DID THEY SPEND IN JAIL?

MR. TAYLOR: THE ARREST DATE WAS JANUARY 23, 2001, YOUR HONOR. SO WE ARE SOMETHING OVER -- AROUND 400 DAYS OR SO.

(PAUSE.)

MR. GASSER: 405 DAYS.

MR. STRICKLER: I COUNT 405 DAYS MYSELF, YOUR HONOR.

MR. GASSER: THAT'S CORRECT. TODAY IS THE 405TH DAY.

THE COURT: ALL RIGHT. YOU GET CREDIT FOR THE 405 DAYS YOU'VE SPENT IN JAIL.

AND ON MR. LUCIOUS STATEN, I THINK YOUR INVOLVEMENT IN THIS WAS LESS THAN THAT OF YOUR BROTHER, SO I'M GOING TO SENTENCE YOU TO 15 YEARS, AND I'M GOING TO SUSPEND THAT TO THE SERVICE OF 8. AND GIVE YOU CREDIT FOR THE 405 DAYS THAT YOU'VE SERVED.

MR. GASSER: THANK YOU, YOUR HONOR.

MR. STRICKLER: THANK YOU VERY MUCH, YOUR HONOR.

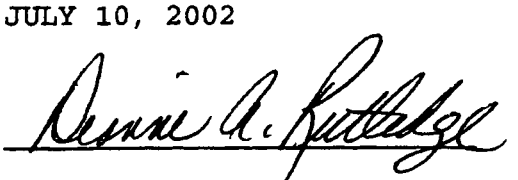
MR. TAYLOR: THANK YOU VERY MUCH, YOUR HONOR.

--- END OF TRANSCRIPT OF RECORD ---

I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE SENTENCING HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF MARCH 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JULY 10, 2002



COURT REPORTER

STATE VS. DUSHON STATEN & LUCIOUS STATEN

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Henry L. McKellar, Judge for the Fifteenth Circuit

THE STATE,

RESPONDENT,

V

DUSHUN STATEN,

APPELLANT

FINAL BRIEF OF APPELLANT

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ARGUMENTS

1.

Andrew Britt's testimony that the decedent allegedly told him that appellant Dushun statement pulled a gun on him on a prior occasion was highly prejudicial hearsay. The state stipulated that neither appellant Dushun Staten or appellant Lucius Staten was the shooter. The role of appellants, if any, in the argument or shooting was highly disputed, and this inadmissible hearsay evidence of a prior bad act was consequently highly prejudicial. The statement did not qualify as an excited utterance as alleged by the state. 14

2.

The judge erred by ruling that Michelle Buff could not testify that Maurice Sanders confessed to her that he shot the decedent. The judge erred by reasoning who the shooter was was not relevant. Both appellants were charged with aiding and abetting the shooter, and their relationship, if any, with the shooter was therefore a very important consideration for the jury to weigh during its deliberations 17

3.

Mere presence, mere association and mere suspicion were each critical legal concepts in this case. The judge erred by refusing to instruct the jury on mere association and mere suspicion as requested 21

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by allowing state's witness, Andrew Britt, to testify that the decedent allegedly told him that appellant Dushun Staten pulled a gun on him on a prior occasion, since this testimony was hearsay, and it was not admissible under the excited utterance exception?

2.

Did the court err by ruling that who shot the decedent was irrelevant, and by excluding Michelle Buff's testimony that Maurice Sanders confessed to shooting the decedent, on the basis that it was inadmissible evidence of third part guilt, since appellant's relationship, if any, with the shooter was relevant given the state's theory that appellant was acting in concert with the shooter?

3.

Whether the court erred by failing to charge that mere association with persons engaged in criminal conduct and mere suspicion of guilt were not sufficient grounds upon which to convict, since these were correct statements of the law raised by the evidence?

STATEMENT OF THE CASE

Appellant Lucius Staten and appellant Dushun Staten were indicted at the January 23, 2002, term of the Richland County grand jury for the offenses of murder and lynching in the first degree. R. 953. Their case was jointly called to trial on February 25, 2002, before the Honorable L. Henry McKellar and a jury. R. 1.

David Taylor represented Dushun Staten. Douglas Strickler represented Lucius Staten. The solicitors were Jonathan S. Gasser and Robert E. Hood. R.. 1.

On March 1, 2002, the jury found appellant Dushun Staten guilty of murder and lynching in the first degree. R. 945, ll. 3-12. The jury found appellant Lucius Staten guilty of lynching in the first degree. R. 945, ll. 13-16. However, the jury could not reach a verdict on the murder count against appellant Lucius Staten and a mistrial was declared on that count. R. 946, l. 18 – 947, l. 21.

On March 4, 2002, Judge McKellar sentenced appellant Dushun Staten to thirty years imprisonment for murder and imposed a ten-year concurrent sentence for lynching. R. 951, l. 25 – 952, l. 4. Judge McKellar sentenced Lucius Staten to fifteen years imprisonment, suspended upon the service of eight years for lynching in the first degree. R. 952, ll. 15-19.

This appeal follows.

STATEMENT OF FACTS

Prior to trial, the solicitor told the judge, "the state is stipulating that neither one of these gentlemen was the shooter...." The solicitor argued that it did not matter whether Maurice Sanders or Limel Sims or Shakeem Wilson was the shooter because the state only alleged that both appellants aided and abetted the shooter. R. 8, l. 12 – 11, l. 7.

Defense counsel Taylor replied, "How could it not be relevant? They have to establish a relationship between a shooter and these gentlemen right here." R. 11, ll. 11-13. Counsel also said, "That is the most critical question in the case. Because if he's not associated with them, they should not be here." R. 11, ll. 11-21.

Defense counsel Strickler added that the state was alleging the shooting was done "at the direction of Lucius Staten" and that "if he can't establish a relationship, you know, what's the charge against him?" R. 11, l. 3 – 13, l. 14. The solicitor responded, "I'm making a blanket motion to bar third-party guilt." R. 15, ll. 15-18; R. 17, l. 11 – 18, l. 2.

The attorney for Maurice Sanders was Garfield Stewart. Steward informed the Court that Sanders was going to invoke his privilege against self-incrimination and he would refuse to testify. R. 20, ll. 8-13. As will be seen infra, there was evidence Sanders fled the jurisdiction after his arrest.

The parties and the court would later agree that Michelle Buff's statement wherein she told the police that Maurice Sanders confessed to shooting the decedent would serve as the proffer of her testimony. The judge refused to let Buff testify based on the state's objection. R. 825, l. 23 – 841, l. 15.[1]

[1] Buff's statements are contained in the Record on Appeal at p. 957-961.

Testimony

Columbia Police Officer Taurus Sanders responded to the shooting at Benedict College about 9:00 p.m. on January 15, 2001. R. 34, l. 9 – 39, l. 20. Sanders remembered there were "maybe at least a hundred people" adjacent to the decedent's body in the parking lot. R. 40, ll. 2-6.

Rachel Boyd was working security that night at Benedict College. Boyd remembered a prior incident on January 12, 2001, involving the decedent, Phillip Lee, and appellants. Boyd did not write a report on the situation because the decedent, Lee, a Benedict College student, told her everything was alright. R. 78, ll. 14-24.

Boyd remembered that at about 9:00 on January 15, 2001, she heard two gunshots fired in the area of Haskill Street. R. 81, ll. 8-20. She saw a man running from the area and that man was arrested. That man was Maurice Sanders. R. 81, ll. 21-24; R. 94, ll. 8-9.

Sanders was wearing a red bandana. As will be seen infra, red and blue bandanas were said to be the marks of the respective gangs -- the bloods and crips. R. 92 l. 25 – 93, l. 14.[2]

Andrew Britt was the decedent's cousin. He also was a student at Benedict College, and the decedent's roommate. Britt was from New York City. R. 115, l. 8 – 116, l. 25. The decedent was from New Jersey. The decedent was 6'4" and weighed 260 pounds. R. 116, l. 23 – 117, l. 16.

Britt remembered he got back to campus from the Christmas break on January 11, 2001with his decedent roommate. R. 117, l. 20 – 118, l. 6. Britt testified that on Saturday

[2] Two red bandanas were taken from Maurice Sanders' possession at the Detention Center. R. 102, l. 8 – 104, l. 21.

evening, January 13, 2001, Britt and the decedent came into contact with appellant Dushun Staten and appellant Lucius Staten in the parking lot outside the Haskill Dormitory. R. 119, l. 21 – 121, l. 10. The decedent was apparently going to see Brandon McCants about a DVD player. R. 149, l. 17 – 150, l. 18.

Britt said they first saw appellant Dushun Staten, and later appellant Lucius Staten appeared in the parking lot. Appellant Dushun Staten asked the decedent, "What's the blue rag about?" Britt testified the decedent was aggravated by the question since he was on his own campus, and should not have to justify his actions. Britt said that appellant Lucius Staten "jumped in and said, 'What's going on?'" The men were "bickering with each other" and appellant Lucius Staten said, "Leave my little brother alone." R. 124, ll. 4-12; R. 124, ll. 14-20.

Britt claimed appellant Lucius Staten said, "'We're going to come back. We're going to start remembering faces,' and they left and that was it." R. 124, ll. 21-25.

Britt admitted on cross-examination that the decedent was a Crip. R. 173, ll. 6-20. Britt also said on cross-examination that no punches were thrown, and that the men parted company without any problem that day. R. 152, l. 17 – 158, l. 6.

Hearsay allegation

Britt testified the next day, on Sunday afternoon, he saw appellant Lucius Staten and appellant Dushun Staten "out there again." R. 133, l. 14. – 134, l. 1. The solicitor then stated he wanted to get in a statement into evidence under the excited utterance exception to the hearsay rule. Defense counsel Taylor objected. R. 135, ll. 5-20.

Britt testified the decedent was a calm person, but that he came back angry to the dorm room later that Sunday evening. R. 136, ll. 1-25. Defense counsel Taylor objected to

Britt's proposed statement about what the decedent allegedly told him that night on the basis of hearsay. The judge overruled that objection. R. 138, ll. 1-2.

Britt then testified the decedent told him, "they just pulled a fucking gun on me,' so I said, 'Damn, who did that?" and he was like, "the niggers we had a – the niggers we had an argument with on Saturday,' so I took it as, 'you know what, forget it. I don't think they're going to come back. Just forget about it." R. 137, ll. 8-16.

On cross-examination by defense counsel Strickler, Britt said the "little brother," or the "smaller guy" was the person the decedent allegedly told Britt pulled the gun. Britt said the "smaller guy" was Dushun Staten and not Lucius Staten. R. 163, l. 13 – 165, l. 9.

Britt was **not** present when the decedent was shot on January 15, 2001. R. 160, ll. 2-4.

Other testimony

Rashon Loggins was also a student at Benedict College. He remembered on January 15, 2001, the day of the shooting, that appellants Lucius and Dushun Staten were "arguing with Phil [the decedent] and a couple of my other friends." R. 185, l. 18 – 187, l. 21.

Loggins claimed that Dushun Staten's friends mostly wore red bandannas, but that he never saw Lucius Staten with a red bandanna. R. 188, ll. 18-24. Loggins acknowledged it was not unusual to see the decedent wearing a blue bandanna. R. 189, ll. 9-17. Loggins remembered the argument was really "about the colors they was wearing, the red and blue, and they was going back and forth about that." R. 190, ll. 12-16.

Loggins intervened and said, "Y'all go about y'all business, we'll go about our business, and then we proceeded to do so." R. 197, ll. 19-25. Loggins remembered that the decedent said, "'Y'all niggers kill me' and then somebody on they [sic] side I heard say,

'Yeah, we'll kill you alright.'" Loggins said two shots were then fired and "I scattered." Tr 198, ll. 1-5. Loggins did not see who shot the decedent. R. 202, ll. 5-6.

Loggins said there were about ten to twelve people in the area of the argument, but he acknowledged appellant Lucius Staten was not one of them. R. 217, l. 6 – 219, 19.

Anthony Kennedy was also a Benedict College student. Kennedy testified the argument that night was about the colors the men were wearing. R. 246, l. 8 – 249, l. 25. Kennedy also acknowledged appellant Lucius Staten was not wearing any red. R. 249, ll. 24-25.

Kennedy recalled there was a crowd outside that night because it looked like the men were "ready to fight." R. 254, l. 10 – 255, l. 11. Kennedy claimed he saw appellant Dushun Staten going inside the back seat of a green car, and claimed appellant Dushun Staten retrieved a silver revolver. R. 255, l. 12 – 256, l. 18. Kennedy claimed Dushun handed the gun "to the shooter behind his back." R. 257, l. 1.

Kennedy maintained as appellant Lucius Staten was leaving to get in the car, "he turned and nodded his head at the shooter." Kennedy said the shooter then "held the weapon up sideways and shot twice." R. 257, ll. 8-21.

Kennedy acknowledged that Lucius Staten showed up on campus that night when the argument was already in progress. R. 291, ll. 6-15. Kennedy also admitted that he did not have any idea what appellant Lucius Staten's nod meant. R. 304, l. 15 – 305, l. 1.

Phillip Perdue testified that the decedent wore a blue bandanna. He said he saw other people on campus wearing red bandannas and that was the basis of the animosity on the campus. R. 323, l. 20 – 324, l. 11. Perdue remembered on the night in question, there

were about thirty people "hanging out" near the Haskill Street Dormitory. R. 327, l. 25 – 328, l. 4.

Perdue said that the decedent and appellant Dushun Staten were arguing that night. R. 330, ll. 3-5. Perdue claimed he heard appellant Lucius Staten say, "Get the hammer," and he said appellant Dushun Staten went to the car, retrieved a gun and gave it to the shooter. R. 331, l. 1- 335, l. 7. Perdue said he ran away because he thought someone was going to be shot. R. 335, ll. 18-22. As he was running, he heard two gunshots. R. 335, ll. 23-24.

On cross-examination, Perdue admitted he never said anything to the police when he was interviewed twice on January 15, 2001, and January 18, 2001, about anyone saying "go get the hammer." R. 349, l. 20 – 349, l. 11.

Appellant Lucius Staten owned the green car that allegedly fled from the scene that night. R. 394, ll. 7-16. Appellant Lucius Staten reported the car stolen at about 7:00 p.m. on the night of January 15, 2001. R. 401, l. 5 – 402, l. 24.

Appellant Dushun Staten identified Maurice Sanders to the police as the shooter. R. 470, ll. 15-18; R. 475, l. 17 – 476, l. 22. As will be seen infra, Brandon McCants also testified that Sanders was the shooter. R. 622, l. 10 – 623, l. 23.

Investigator Paul Mead testified appellant Lucius Staten told him he was attempting to break up the argument that evening and trying to be a peacemaker. R. 486, l. 23 – 488, l. 8. Appellant Lucius Staten told Mead he had turned to walk away from the argument when he heard shots and then he ran. R. 527, l. 15 – 528, l. 9.

Sanders was released from custody the same evening as the shooting. He fled the jurisdiction. R. 474, l. 21 – 475, l. 2.

Brandon McCants accompanied appellant Lucius Staten to the Circuit City that night. R. 525, ll. 5-22. When they returned to Benedict College, there was a large crowd gathered outside the Haskill dorm. R. 527, l. 8-22. McCants said appellant wanted everyone to leave. "He told everyone to get in their car." R. 616, l. 25 – 618, l. 7.

McCants acknowledged that the decedent was a Crip and that the decedent "started doing his dances with his New Jersey friends, and Dushun was upset." R. 637, ll. 8-15. McCants identified Maurice Sanders as the shooter. R. 622, l. 10 – 623, l. 23.

McCants testified on cross-examination by the solicitor that neither appellant Dushun Staten nor appellant Lucius Staten had anything to do with Sanders shooting the decedent that evening. R. 647, l. 25 – 649, l. 5.

Appellant Lucius Staten testified that on the Friday before the shooting, he returned to the campus to find seven to ten people arguing with his brother. Appellant Lucius Staten said he approached to find out what the problem was and security arrived and "the situation was diffused." R. 686, l. 5 – 688, l. 2. Appellant said on cross-examination by the solicitor that the situation regarding this prior incident was resolved before campus security even arrived. R. 748, ll. 8-14.

Appellant Lucius Staten said his brother, appellant Dushun Staten, was "standing back away from the crowd" while Maurice Sanders and others were arguing that fatal evening. R. 971, ll. 16-23. Appellant Lucius Staten explained that the men in the dormitory parking lot were rapping and singing that evening. R. 729, l. 22 – 730, l. 7. Appellant Lucius Staten repeated that he attempted to be a peacemaker during the argument. R. , ll. 10-15.

Request to charge

Court's Exhibit #2 was the defendant's request to charge. These included charges on mere knowledge another person was going to commit a crime, and mere presence and mere association not being a sufficient basis upon which to convict. R. 962.

However, in his charge on accomplice liability, the judge only instructed "mere presence at the scene of the crime is not sufficient to establish – to establish guilt as an accomplice. Now, when we say someone does something intentionally, that means willfully, intending to result which actually occurs and not accidentally or involuntarily." R. 936, ll. 17-22.

Defense counsel Strickler took exception to the judge not charging mere suspicion. R. 942, ll. 13-20. Defense counsel Taylor added, "I didn't hear my request for charge #7, not just mere presence, but mere association." R. 943, ll. 2-4. The judge responded, "I think my charge sufficiently covered that. It's noted." R. 943, ll. 5-6.

ARGUMENT

1.

Andrew Britt's testimony that the decedent allegedly told him that appellant Dushun statement pulled a gun on him on a prior occasion was highly prejudicial hearsay. The state stipulated that neither appellant Dushun Staten or appellant Lucius Staten was the shooter. The role of appellants, if any, in the argument or shooting was highly disputed, and this inadmissible hearsay evidence of a prior bad act was consequently highly prejudicial. The statement did not qualify as an excited utterance as alleged by the state.

In State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998), the Supreme Court noted that under Rule 803(2), SCRE, an excited utterance was an exception to the hearsay rule. However, an excited utterance is defined as "a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." State v. Hill, 501 S.E.2d at 125. The Court noted that the rationale behind the excited utterance exception is that the startling event "suspends the declarent's process of reflective thought, thus reducing the likelihood of fabrication." State v. Hill, 501 S.E.2d at 125, *citing* State v. Harrison, 298 S.C. 333, 380 S.E.2d 818 (1998).

The statement in State v. Hill came from a bystander. However, that statement that there were two suspects involved in the shooting was made fifteen to thirty minutes after the Assistant Chief of Police in Georgetown was shot near a car wash. There was an abundance of evidence this was a major event, and that the scene was highly electric and startling. Nonetheless, the Supreme Court held that this statement did not qualify as an excited utterance under Rule 803(2), SCRE.

Here, the alleged statement by the decedent to Britt did not even involve "the event." It involved a prior bad act. As such proof of that prior bad act must have been clear and convincing to be admissible. State v. Braxton, 343 S.C. 629, 541 S.E.2d 833, 835-836 (2001).

Further, "in most cases, proof that the event occurred is furnished either by testimony of witnesses other than the declarant, or by circumstantial evidence that something out of the ordinary occurred. " Weinstein's Federal Evidence §803.04 [2][a] at p. 803-20 (March, 1997 ed).

However, the declaration itself can be sufficient proof of the exciting event. "Such an approach is somewhat unsettling theoretically as an example of a statement lifting itself into admissibility by its own bootstraps." Weinstein's Federal Evidence §803.04 [2][a] at p. 803-20-21 (March, 1997 ed).

Here, Britt was the decedent's cousin and his roommate. There was not any other evidence that appellant Dushun Staten pulled a gun on the decedent that Sunday other than Britt's bare claim the decedent told him it happened. The judge had to factor into his discretion that there was no corroborating evidence independent of Britt's claim the decedent told him this event occurred on the Sunday before *the event* – the shooting. See, e.g. United States v. Brown, 254 F.3d 454, 459-460 (3rd Cir. 2001).

Further, a statement that is alleged to be an excited utterance must have sufficient guarantees of trustworthiness to serve as a substitute for cross-examination. See Collins, South Carolina Evidence, §17.1 at p. 521 (2 ed. 2000); State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (1999). Here, again, the statement allegedly made by the decedent pertained to a prior bad act, and not that event for which the appellants were on trial. Cf. State v. Hill,

supra. Proof of it must have been clear and convincing, which is different from the statement "lifting itself into admissibility by its own bootstraps." Weinstein's Federal Evidence §803.04 [2][a] at p. 803-20-21 (March, 1997 ed).

Hearsay is a statement "other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c). Here, the statement regarding the prior bad act was offered by the state to seemingly show appellant Dushun Staten's state of mind or lack of accident or mistake. The proof of the matter asserted was that this prior bad act occurred. Defense counsel correctly objected on the basis of hearsay, and the state failed to show the alleged statement was admissible as an excited utterance. Moreover, it was undisputed that neither appellant Dushun Staten nor appellant Lucius Staten shot the decedent on January 15, 2001.

Here, Britt was the decedent's cousin, his friend and his roommate. His statement was offered to show that the appellants allegedly had shown a propensity for violence towards the decedent that included the use of a deadly weapon. The role of the appellants, if any, in shooting became the critical issue for the jury. Britt's testimony that the decedent allegedly told him the appellant Dushun Staten had pulled a gun on him within days of the shooting was extremely prejudicial. Britt's statement did not bear the indicia of reliability necessary for a statement to be admitted as an exception to the hearsay rule, and it involved a prior bad act, rather than *the event* itself in the traditional role of an excited utterance.

Given the extremely prejudicial effect of this hearsay evidence, appellant should be granted a new trial.

2.

The judge erred by ruling that Michelle Buff could not testify that Maurice Sanders confessed to her that he shot the decedent. The judge erred by reasoning who the shooter was was not relevant. Both appellants were charged with aiding and abetting the shooter, and their relationship, if any, with the shooter was therefore a very important consideration for the jury to weigh during its deliberations.

Defense counsel took exception to the assertion that who the shooter was did not matter. That it was irrelevant. The judge stated, "I'm impressed by his [the solicitor's] argument that it's not really relevant in this case." R. 11, l. 3 – 12, l. 13.

Defense counsel argued who the shooter was was critical in this case. Further, counsel argued there was sufficient corroborating evidence of the truth of this evidence. Counsel noted that Maurice Sanders confessed "[w]hile she [Michelle Buff] was taking him to the bus station so he could flee and so he could try and find the murder weapon, which he had thrown away while he was running from the campus police. All of that is corroboration, but what the man says about shooting this fellow comes into evidence. It's that simple." R. 6, l. 7 – 7, l. 9.

The solicitor argued that "they've got the girlfriend of the shooter and a friend of Lucius that's all they have [to testify that Maurice Sanders was the shooter]." R. 10, ll. 12-13.

In her statement to Investigator Paul Mead of the Columbia Police Department on January 26, 2001, Michelle Buff said she took Maurice Sanders back to the Benedict area to look for the gun. Sanders confessed to Buff the day he fled for Jacksonville that "he shot a man at Benedict College." R. p. 957.

Sanders told Buff that "this guy was talking shit and he shot him. Maurice said the guy he shot and some of his friends had jumped him . . ." R. p. 958.

First, evidence is relevant if it tends to establish or make or less probable some matter in issue upon which it directly or indirectly bears. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). Defense counsel correctly argued that the relationship of the appellants to the shooter was a critical fact since the state was alleging both appellants aided and abetted that shooter.

The state's theory of the case was that appellant Lucius Staten "ordered" the shooter to shoot the decedent by nodding at him. The state also alleged that appellant Dushun Staten retrieved the gun from the backseat of a car, and gave it to the shooter behind his back.

This evidence, if to be believed, leads to the inescapable conclusion that appellant Lucius Staten had some power over the shooter such that he could order him to shoot the decedent by simply nodding. Yet, there was no evidence appellant Lucius Staten belonged to a gang, had any such power, as a leader or otherwise. Further, there was evidence he was attempting to be a peacemaker.

There was evidence appellant Dushun Staten deferred to Lucius, and evidence he was in the background at the time of the shooting. Thus, evidence Maurice Sanders was the shooter was critical because the state did not offer any evidence showing appellant Lucius Staten had control over him, or evidence Sanders could control appellant Dushun Staten. Duff's testimony that Sanders confessed to her was vital to the defense. Appellant respectfully submits there was no stronger evidence in this case than a confession.

Eyewitness testimony is always suspect, particularly where witnesses are choosing sides or have reasons to protect themselves.

Maurice Sanders' statement admitting he was the shooter was clearly a statement against his penal interest. See State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). The statement was sufficiently corroborated because Brandon McCants' positively testified that Maurice Sanders was the shooter. Further, Sanders fled the scene after the shooting, and again after he was released from custody. Eyewitnesses at the scene blamed Sanders for the shooting. R. p. 420, ll. 10-18; R. 562, ll. 21-24; r. 622, l. 10 – 623, l. 23.. Moreover, Sanders fled the jurisdiction after his release from jail.

This was not a true case of third party guilt because neither appellant was alleging someone other than them killed the decedent. They did not have to; the state stipulated that neither appellant shot the decedent.

In State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992), the Supreme Court held that out-of-court statements against penal interests made by an unavailable declarant are admissible at trial. The Court stated, however, that if the out-of-court statement against penal interest is proffered to exculpate the accused in a criminal trial, they are admissible only if corroborating evidence clearly indicate the trustworthiness of the statements. See, also, State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999).

Even if this Court finds the traditional State v. Doctor analysis applicable here, there was strong corroborating evidence Maurice Sanders shot the decedent. Further, there was no corroborating evidence of the state's theory of the case that the appellants were aiding and abetting the shooter, as defense counsel argued, unless it could not establish a relationship between appellants and the shooter.

Moreover, in Cooper, the Court noted that even if testimony is inadmissible as substantive evidence of third party guilt, it may be admissible for other purposes.

Here, the jury was faced with a case where it was undisputed neither appellant was the shooter. The jury had to decide whether either or both appellants aided and abetted the shooter. There was strong evidence Sanders was the shooter, and his statement against penal interest, his confession to Michelle Buff, should have been allowed into evidence.

Evidence Maurice Sanders admitted being the shooter was relevant towards the jury's consideration of the relationship between the shooter and appellant Lucius Staten and appellant Dushun Staten. The exclusion of Buff's relevant testimony denied appellant a fair trial.

3.

Mere presence, mere association and mere suspicion were each critical legal concepts in this case. The judge erred by refusing to instruct the jury on mere association and mere suspicion as requested.

There was evidence a crowd of people had gathered around the scene of the argument. Defense counsel asked the judge to instruct the jury that "mere presence with another person or persons who are engaged in criminal conduct or with a person or persons who subsequently engage in criminal conduct is not sufficient to show an intent to aid that conduct. Similarly, the mere fact that the defendant may have associated with such person or persons or have met with such person or persons and discussed common aims and interests does not necessary establish proof of an intent to aid criminal conduct by such person or persons." The Defendants' Request to Charge #5; R. 978.

The defense also wanted the jury charged that the state had to prove beyond a reasonable doubt not only that the defendant was present, but also that he knew of the illegal conduct and provided aid and assistance in the commission of the crime. R. 978.

The purpose of jury instructions are to enlighten a jury and to aid it at arriving at the correct verdict. State v. Leonard, 292 S.C. 133, 137, 357 S.E.2d 270, 273 (1987).

Mere association with other people, even under the law of conspiracy, is insufficient to establish guilt. In State v. Barraso, 328 S.C. 268, 493 S.E.2d 854 (1997), the Supreme Court wrote, "we remind the state that mere association with admitted members of the conspiracy is insufficient to tie other persons to that conspiracy." *Citing*, State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981).

Further, in State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991), the Supreme Court held it was reversible error to instruct the jury that the defendant's mere presence or *association* was sufficient to establish guilt, or to establish he was a member of a conspiracy. See, also, State v. Dennis, 321 S.C. 413, 468 S.E2d 674, 678 (1996).

Further, it is elementary that mere suspicion of a crime is insufficient to justify a verdict of guilty or even get the state's case beyond a directed verdict motion. See, State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001); State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996).

In this case, there was evidence that raised a suspicion of guilt based on the disputed evidence above. It was consequently critical that the jury understand that mere suspicion was insufficient to establish guilt.

Further, the judge refused to give a State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991), charge defining a reasonable doubt to the jury. The judge did not define a reasonable doubt for the jury and he also gave only the bare bones State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997), circumstantial evidence instruction. R. 1125, l. 6 – 1127, l. 9; R. 1254, l. 2 – 1255, l. 1; R. 1258, ll. 17-22. The jury was left without the circumstantial evidence instruction that that the evidence must point conclusively to the guilt of the accused to the exclusion of any other reasonable hypothesis. All of this made the trial judge's failure and refusal to charge mere association and mere suspicion all the more prejudicial.

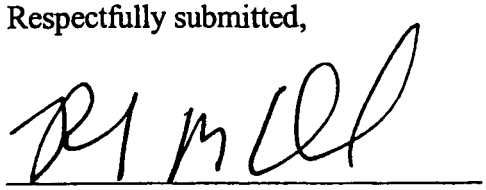
It is hornbook law that mere suspicion of guilt cannot support a guilty verdict. State v. Buckmon, supra. It is also elementary that mere association with another person who commits a crime is insufficient to establish guilt. State v. Robinson, State v. Barroso, supra.

Our Supreme Court has held that the trial judge has a duty to craft his instructions to the facts of the case. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). The judge's refusal to charge on mere association and mere suspicion in this case was an abuse of discretion. As stated, the evidence of what occurred in the Benedict parking lot that night was highly disputed. There was evidence appellant Dushun Staten and appellant Lucius Staten were present, and may have known or associated with some of the other people there at times. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Richland County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
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This 3rd day of August, 2004.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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August 3, 2004

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Henry L. McKellar, Judge for the Fifteenth Circuit

THE STATE,

RESPONDENT,

V

DUSHUN STATEN,

APPELLANT

CERTIFICATE OF SERVICE

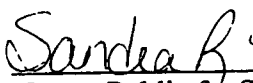
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon S. Creighton Waters, Esquire, this 3rd day of August, 2004.



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 3rd day of August, 2004.



Notary Public for South Carolina (L.S.)

My Commission Expires: February 3, 2005.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Henry McKellar, Circuit Court Judge

THE STATE,

Respondent,

v.

DUSHUN STATEN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

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III. DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY NOT CHARGING MERE SUSPICION AND MERE ASSOCIATION, WHERE, CONSIDERING THE CHARGE AS A WHOLE, ITS INSTRUCTIONS ON MERE PRESENCE AND ACCOMPLICE LIABILITY WERE SUFFICIENT TO CONVEY THE REQUESTED PRINCIPLES?

STATEMENT OF THE CASE

At the January 2002 term, the Richland County Grand Jury indicted Appellant, Dushun Staten, for murder and first degree lynching (02-GS-40-1148 & -786). That same term, the grand jury also indicted Appellant's brother, Lucius Staten, for the same offenses (02-GS-40-1149 & -783). Specifically, the murder indictments alleged that, on or about January 15th, 2001, Appellant and his brother aided and abetted the principal party who killed Phillip Lee, Jr., with malice aforethought by shooting him in the head.

The Honorable L. Henry McKellar conducted a jury trial of both brothers from February 25th through March 1st, 2002. At trial, Appellant was represented by David Taylor, Esquire, and Deputy Public Defender Douglas Strickler represented Appellant's brother Lucius. Deputy Solicitor Jonathan S. Gasser and Assistant Solicitor Robert E. Hood prosecuted the case for the State. On March 1st, 2002, the jury found Appellant Dushun Staten guilty of both murder and lynching; the jury also convicted Lucius of lynching but a mistrial was declared on his murder charge. Judge McKellar sentenced Appellant to thirty years in prison for murder and a ten year concurrent sentence for lynching; Lucius was sentenced for lynching to fifteen years suspended upon the service of eight years

A timely notice of appeal was filed and served. This appeal follows.

STATEMENT OF FACTS

It was undisputed at trial that someone *other* than the Staten brothers shot and killed the victim, Phillip Lee at Benedict College on January 15th, 2001. However, it was also undisputed that the brothers were present when the murder occurred. The State proved that the Statens were heavily involved in the events and assisted the shooter; the defense claimed mere presence. The Statens were but two of five individuals charged in the case.

A. Background

When he was gunned down, Phillip Lee, Jr. was a 20 year-old Benedict College student originally from New Jersey. Apparently, Lee belonged to or associated with the Crips, and he often wore or carried a blue bandana. **{R. 61-63; 116-18; 122-23; 173-74}**.

Lucius Staten was from the Bronx, but he had family in South Carolina and had occasionally lived here in the past. He moved here in 1999 and worked at a variety of places, including the Department of Juvenile Justice. However, DJJ had placed him on administrative leave in November of 2000 due to some "paperwork problems". **{R. 667-71}**. At the time of the incident, Lucius was living at an apartment in Columbia with his girlfriend and his cousin, Shakeem Wilson. **{R. 667-72; 678-79}**.

Lucius's little brother Dushun had come down from New York on Christmas Eve 2000, and he had been staying with their mother on Reid Street or with Lucius at his apartment. While Lucius denied it at trial, a number of witnesses testified that Dushun was a member of the Bloods and wore red bandanas or red clothing. **{R. 126-27; 241-42; 324-25; 634-36; 671-74; 744-45}**.

Since neither Lucius nor Dushun were working, the two took to hanging out and socializing with passersby in the parking lot of the Haskell dormitory at Benedict. Neither of the two was a student there. **{R. 673-76}**.

B. 1/12/02-1/13/02: Colors

As Benedict College students began arriving back on campus from Christmas vacation around January 8th, 2001, several of them noticed Dushun and Lucius hanging out in the Haskell dorm parking lot at various times during the day and night. The two were often seen in either a green Galant or small white car. Their presence would ultimately lead to the fatal confrontation. **{R. 121-22; 133-34; 186-90; 237-41; 318-23}**.

In what to most people would be an absurdity, the evidence in this case showed that the disagreement first began over the fact that Phillip wore a blue bandana and Dushun a red one – which of course is grounds for battle among gang members and their wannabes. Then-Benedict students Rashon Loggins, Tony Kennedy, and Manny Purdue all described the first argument that occurred on Friday, January 12th, at the top of a hill in the Haskell dorm parking lot. **{R. 78-79; 190-93; 241-44; 323-25}**. Tony Kennedy, who described in the most detail this incident, testified that he heard Dushun challenge Phillip about his bandana, saying "What that blue be about?". Phillip responded "What that red be about?", to which Dushun stated he represented "49 Brim" or "49 Bullets", an apparent reference to his gang chapter. Phillip said "never heard of it" and turned away, which apparently inflamed Dushun because Phillip had never heard of his "set". **{R. 241-43}**.

The argument escalated, with Lucius eventually jumping in to argue on behalf of his younger brother. However, it never came to blows, and by the time a Benedict security

officer arrived, it had been defused. The security officer did not file a report as she knew Phillip and he told her everything was OK. **{R. 243-44}**.

Unfortunately, everything ultimately was not OK, as apparently the fight flared up again the next day, Saturday. Andrew Britt, Phillip's cousin and roommate, testified that on Saturday he and Phillip went to Alonzo Shuler's room at Haskell dorm so that Andrew could get a haircut from Alonzo. After Andrew got his haircut, he went with Phil to see a kid named "Pelo" about buying a DVD. They found Pelo in the Haskell parking lot, where he happened to be standing with the Statens. **{R. 121-22}**.

Evidently seeing the blue bandana on Phillip's head, Dushun again asked "what's that blue rag about", and Phillip said "this is what I do, this is what I wear". The two exchanged more words and an argument flared, as people in the area gathered to watch. Alonzo came up from Haskell in support of Phil, and eventually started arguing with Lucius, who had joined the dispute in support of his little brother. Phillip mainly argued with Dushun, who claimed to be a Blood and made gang signs at Phillip during the encounter. Both Dushun and Lucius at various times went back to their car momentarily but then returned to rejoin the argument. **{R. 122-24; 126}**.

Eventually, Phillip put out his hands and offered to "forget about it". Lucius initially stated "no, let's not forget about it", but eventually everyone shook hands. Lucius and Dushun got in their car and started to drive away, but abruptly stopped. Lucius got out to give these parting words: "You know what? We're going to come back, and we're going to start remembering faces." **{R. 123-25; 130-32}**.

C. 1/14/01: Dushun pulls a gun

Andrew did not spend the Sunday with Phillip but saw him later that evening at their dorm room. Normally a very calm, laid back person, Phillip came into the dorm room "hysterical and like scared", walking around the room and "banging on stuff". After Andrew made several fruitless attempts to get Phillip to tell him what was wrong, Phillip finally said, "They just pulled a fucking gun on me . . . the niggers we had an argument with on Saturday". Phillip told Andrew that "the smaller guy" or Dushun, pulled the gun. **{R. 133-37; 163-65}**.

D. 1/15/01: One argument too many – the murder

As might be expected, the confrontations between Phillip and the Staten boys finally went too far. Tony Kennedy, Rahson Loggins, and Manny Perdue were eyewitnesses who testified for the State.

Tony Kennedy gave perhaps the most detailed description of the argument leading to Phillip's death. Tony noted that on that Monday, which was Martin Luther King Day and thus a holiday at school, he, Phillip, and some other guys took a trip to Clemson to get tuition money from the parents of one of the guys. They returned to Benedict about 8:30 or 9:00 at night, and Phillip went into Haskell to get a haircut from Alonzo. After his haircut, Phillip came back outside; Manny heard him decline a ride back to his dorm from their buddy Aswad. **{R. 243-46; 325-27}**.

As Tony and Phillip walked up the hill by the parking lot, they passed by about five guys hanging out by the Staten's green Galant. Tony noted that these guys were wearing red bandanas and clothing, and ultimately identified Dushun, Maurice Sanders or "Mo", and

Shakeem Wilson as part of the group. Dushun had on his yellow "Averix" jacket that he had been seen wearing earlier in the week. **{R. 245-50}**.

Phillip was wearing a blue cap and had his blue bandanna sticking out of his back pocket, and one of the guys by the Galant asked, "What that blue be about? You can't wear that around here." Phillip responded that they could not tell him what to wear on his own campus, and the argument started up again. As it wore on, a number of Phillip's friends and onlookers gathered in a semicircle around Phillip to watch or support him. According to Tony, during this argument Dushun hung back a little towards the car and did not say much. **{R. 249-53}**.

Tony testified that after about five or ten minutes Lucius pulled up in a white car. Phillip told him "your men trying to tell me what I can't and can wear", to which Lucius responded, "Oh you coming back around here with this again? Come on, you know you can't wear that around here." Phillip disagreed, to which Lucius stated, "you might want to shut your mouth". **{R. 247-49; 253-54; 287-91}**.

Phillip continued to argue with Lucius and the other guys, and some of Phillip's friends started to tug at him and ask him to go. Eventually, one of Phillip's opponents stated "come on, let's go", and Dushun walked to the back seat of the car. **{R. 253-54}**.

Dushun reached in the back seat and pulled out a silver revolver with a red bandana wrapped around its grip. He walked up behind one of his friends wearing a black and red Northface jacket, and handed the gun to the guy behind the guy's back. Tony testified that Lucius then said "we about to go" and started towards the car, but he turned briefly and nodded towards the guy in the Northface jacket. **{R. 255-57}**.

At that point, the Northface guy raised the revolver up sideways and fired twice at Phillip, who went down. The crowd either scattered in fear or hit the deck, and Tony testified that the guys jumped in the Galant, which took off out of Haskell's parking lot. Tony testified that the shooter was NOT Dushun, Lucius, Shakeem, or Maurice Sanders, but the guy in the Northface jacket with braided hair. **{R. 257-64}**.

Of course, as is typical, Rashon's recollection differed in some respects from Tony's, but the basic elements were the same. Rashon, who was Alonzo's roommate, also testified that before the incident Phillip got a haircut from Alonzo at the Haskell dorm. Phillip and Tony left Rashon's room first, so Rashon arrived after the argument had begun, having seen Phillip and the crowd of people at the top of the hill. Rashon walked up to assist Phillip and Tony in the argument. **{R. 190-95}**.

Rashon testified that Phillip was arguing with Dushun and a group of five or so guys standing near a green Galant with "A&K" tags on it. One of the guys whom Rashon had never seen before was wearing a black and red Northface jacket. Dushun was wearing his yellow Averix jacket, and another guy had on red bandanas. Lucius was not there. **{R. 192-95}**.

Rashon also stated that after about five minutes into the argument Lucius arrived. He thought Lucius did not pull up at that time but already had been sitting in the little white car in the parking lot. Phillip was arguing with the guy in the Northface jacket, but when Lucius arrived, he and Lucius began to go at it. Rashon was trying to get everyone to settle down, and eventually it came to "y'all go about y'all business; we'll go about our business". Lucius said: "Enough of this, y'all need to go away, get in the car". **{R. 196-97}**.

According to Rashon, Phillip then stated, "y'all niggers kill me", to which somebody on the other side replied "Yeah, we'll kill you alright". Lucius and the guy in the Northface jacket were nearest to Phillip when this comment was made. As Rashon turned around, he suddenly heard two gunshots, and took off. **{R. 198-203}**.

Rashon did not see the shooter, but he stated that Maurice Sanders did not really play a role in the events and was mostly in the "back scene" just watching. **{R. 204-06}**.

Finally, Manny Perdue testified about the incident. He noted that he had previously met Dushun and Lucius through his cousin Lamar Perdue, and that Lucius went by the nickname "Jah". Manny also knew Phillip as they were both criminal justice majors. **{R. 318-23}**.

Manny was hanging out with Aswad in front of Haskell when he heard an argument and ran up to where it was taking place. By the time he arrived, Lucius was already there, and Manny testified that Phillip and Tony were arguing with the two Staten brothers. A crowd of people stood around, including some guy in a black jacket, and the Statens' cousin. **{R. 326-31}**.

The argument progressed, and eventually Lucius turned and said, "get the hammer", which is slang for a gun. Manny saw Dushun run to the car and return with a chrome gun he gave to the "kid in the black jacket". Manny took off running because he thought someone was about to get shot, and heard two shots as he fled. **{R. 331-36}**.

E. 1/15/01: The immediate aftermath

As she sat in her cruiser in the campus area, Benedict Campus Safety Officer Rachel Boyd heard the two shots and looked up to see a black male wearing a red

1999. **{R. 382-83; 392-97; 422-24}.**

Meanwhile, sometime on the evening of January 16th, a green Galant was abandoned partly in the woods surrounding the long dirt driveway that led to an air conditioning business out Farming Creek Road near Ballentine. Workers there called police on the 17th, but the officer who came out was unaware of the car's potential connection to the crime and told the workers they would need to have the car privately towed. Later that day, however, workers read in the paper about a green Galant being sought in the Benedict murder and called police again. This time, police retrieved the car, and its VIN number matched the number of the car sold to Lucius Staten by A&K. **{R. 365-69; 374-78; 383-86; 388-92; 810-12}.**

On January 19th, officers were dispatched to Crossroads Apartments on Zimelcrest drive to investigate a stolen car report. There they met Lucius, who claimed that his car was stolen by unknown individuals on January 15th, 2001 at about 7 p.m., or approximately two hours before Phillip was murdered. Lucius told police that while he and his mother were the only ones with keys to the vehicle, there was a spare key in a metal box under the wheel rim. Lucius specifically mentioned that he had heard a similar car had been involved in a homicide, but stated he thought his car had probably been repossessed. **{R. 398-402}.**

G. 1/23/01: The search warrant and arrest

As police obtained further statements and identification from witnesses, they eventually obtained a search warrant of Lucius's home and an arrest warrant for him. Police did not have warrants on Dushun at the time because they did not have a picture

of him to show witnesses. **{R. 444-46}**.

These warrants were executed early on the morning of January 23rd at the Crossroads Apartments. There, police found Lucius, Dushun, Shakeem Wilson, and Lucius's girlfriend Talia Cole. Dushun's yellow Averix jacket was found in a box of clothes, and indeed must of the items in the apartment were packed up as if the occupants were moving somewhere. Outside the apartment, police found a small white Daewoo automobile belonging to Talia, and which contained a set of keys to the Galant as well as a small map folded in such a manner as to show Farming Creek Road. The map was unfortunately not collected by police. **{R. 446-58; 564-66}**.

H. 1/23/01: Dushun and Lucius's statements

Lucius was arrested and Dushun was transported to the station where they were questioned by Columbia police. Dushun first gave a false name and denied being Lucius's brother, and denied ever being at Benedict when the shooting took place. After being told other witnesses said differently, Dushun then admitted to being at Benedict at the time of the murder, but said he was on the other side of the parking lot talking to some girl whose name he could not remember. When advised that several witnesses said he was involved in arguments with Phillip, Dushun admitted to being Lucius's half-brother and stated that he had not been cooperating because he was afraid for family. **{R. 457-70; 472}**.

Dushun then claimed "Mo" shot the victim, and said Mo was at the scene with "Mel" and "Careem". In a photo lineup, Dushun identified Maurice Sanders as "Mo", and stated that Mo was wearing red boots, a red hat, and red scarves. According to Dushun, Maurice and Phillip were arguing while Lucius tried to break it up. Dushun did not see the shooting,

but he saw the gun in Mo's hand. When told that witnesses were saying a guy in a black Northface jacket shot the victim, Dushun stated that person was "Mel". Dushun offered to try to get a first name, and called Tisha Davis. Dushun said Tisha called Mel's ex-girlfriend Michele Buff, who said the full name was Limel Simms. **{R. 470-73}**.

In a written statement, Dushun asserted that Shakeem was the only person in Lucius's Galant as it left the scene, while Dushun ran to Lucius's mother's house on Reid Street. Dushun claimed that he later got a ride to Crossroads from Charice Glivens. Dushun subsequently identified a picture of Limel Sims as the man in the Northface jacket. **{R. 475-79}**.

Lucius also started out by lying to police. Before he could be asked a question, he blurted out that he was not at Benedict College and he could prove it. Lucius claimed that he was at Circuit City near Columbia Mall with a guy named Brandon, and that he should be present on the store's security cameras. **{R. 480-86}**.

Police then advised Lucius that his brother as well as other witnesses placed him at the scene, and, like Dushun, he then admitted he was there. Lucius denied any prior arguments with Phillip, but admitted having a minor disagreement with Alonzo over a girl. According to Lucius, he had just arrived at the time of the shooting and was just trying to break it up. Lucius stated two guys named Mo and Mel were there, and claimed he had just met them once through his brother at the mall. Lucius asserted that he had started to walk away when he heard the shots, after which he ran to a nearby bank and paid a guy $20 to take him home. Lucius also identified photographs of Maurice Sanders and Limel Sims. **{R. 486-90}**.

I. The defense case

Lucius first called Brandon McCants, who was a former student at Benedict but was working at Circuit City at the time of the murder. Like the Statens, Brandon was another non-student who would go hang out at the college, and he met the Statens in front of the Haskell dorms in early January. **{R. 599-603}**.

Brandon admitted that on either Friday or Saturday before the murder he witnessed an argument between Phillip and Dushun that lasted about 20 minutes. Brandon agreed that Lucius was there too, and stated that as the argument wore on more people arrived to support Phillip. Eventually both sides just left. **{R. 604-07}**.

On January 15th at about 8:30 p.m., Brandon again saw Lucius, Dushun, and Shakeem in front of Haskell dorm. Brandon and Lucius talked about car stereos, and then Brandon took Lucius to Circuit City near Columbia Mall to show him some of the latest electronic gear. They were at the store for about 15 to 20 minutes, and then returned to Haskell. **{R. 608-12}**.

When the guys returned from Circuit City, they saw a large crowd. Dushun was standing off to the side, but a guy in a racing jacket and a guy in a Northface jacket were involved in the argument with another group of about 15 people. Lucius got out of the car and waded into the middle of the argument, trying unsuccessfully to get everyone to leave. Brandon claimed that there was no animosity between Lucius and Phillip during these events, and that Dushun was standing just there uninvolved and mute. According to Brandon, Lucius then started speaking to his cousin and brother, and had walked back to the Galant, when the guy in the racing jacket suddenly pulled out a gun and shot Phillip

twice. Everyone eventually scattered, and while Brandon saw the Galant leave, he claimed he did not know where the Statens went. Brandon said they had nothing to do with the crime. **{R. 612-20}**.

Brandon claimed that he was in jail at Bluff Road a few months later in May, and he saw the guy in the racing jacket who did the shooting. Brandon identified the shooter as Maurice Sanders, and said Maurice was at the scene with the guy in the black Northface jacket. **{R. 623-25}**.

On cross by the solicitor, Brandon admitted that Dushun was a known member of the Bloods who often wore red clothing. Brandon said Dushun would get aggravated from the fact that Phillip was a Crip who would "do dances" with his friends from New Jersey. At the prior incident, Dushun challenged Phillip by saying "we can shoot the five", which means to fistfight. Brandon insisted that a semiautomatic pistol was used to shoot Phillip, even though the other witnesses identified a revolver and no shell casings were found at the scene. Brandon agreed that both Maurice and the Northface guy were wearing red bandannas. **{R. 630-42}**.

Next, Lucius himself testified. He stated that during the summer and fall of 2000, he started hanging out at the Benedict campus to socialize with former co-workers. He admitted that the Galant used to be his, but said that since it was uninsured he did not drive it. Despite this principled stand, Lucius claimed that while he would not drive the car he let his cousin Shakeem drive it to work. Lucius said that Shakeem did not have permission to take the car to Benedict, and he was surprised to see it there. **{R. 670-81}**.

Contrary to his statement to police, Lucius admitted a prior incident involving the

victim on the Friday before the murder. Lucius stated that the argument started between Dushun and Phillip, but Lucius got involved because he was more Phillip's size and Dushun was outnumbered anyway. Lucius claimed that Alphonzo Shuler took his shirt off, which indicated preparation to fight, so Lucius stepped in and began dealing with Shuler. Lucius stated that he was just trying calm the fight down and that he eventually shook hands with and embraced Alonzo. **{R. 682-88}**.

On the 15th, Lucius arrived at Haskell in the late afternoon. His brother was already there, but neither Shakeem, Limel Sims, who wore the Northface jacket, nor Maurice Sanders were there. Lucius admitted having briefly met Maurice before the murder. Eventually, Lucius's Galant showed up driven by Shakeem, as did Brandon. Brandon and Lucius talked car stereos for a while and eventually Brandon offered to take him to Circuit City to check out audio gear. Lucius claimed that when he left, neither Maurice or Limel were there. Lucius and Brandon spent some time at the Columbia Mall Circuit City and then returned to the dorm parking lot. **{R. 689-94}**.

According to Lucius, when they returned, a large crowd of over fifteen people had gathered. Lucius got out of the car and noticed Maurice and Limel arguing with Phillip and some of Phillip's friends. Lucius claimed he tried to ask Phillip what was going on, but when he was ignored, Lucius told Tony Kennedy, "why don't you get your man?" Tony did not respond either, and Lucius testified some of the crowd was starting to get involved in the scuffle. **{R. 695-701}**.

Lucius claimed that he was worried about his brother and cousin Shakeem, so he told them to get into the car. They were walking to the car when they heard the gunshots

and hit the ground. Lucius said he and his brother got up and started running until they reached Allen University, where they paid a guy $20 to give them a ride to a gas station on St. Andrews Road. They then called a girl named Charise to give them a ride to her apartments off Broad River Road. From there, they called Lucius's fiancé Talia to pick them up, and they rented a hotel room for Dushun. **{R. 701-12}**.

Lucius denied ditching the Galant on Farmers Creek Road, but admitted lying to police and reporting it stolen. For whatever these statements mean, Lucius claimed he made the false report because Shakeem was not supposed to have the car at Benedict, and he picked 7:00 p.m. as the time because that was the last time he knew the car was there. **{R. 712-14}**. Lucius claimed the map in the white car was one he had received from an agency to assist in finding a new place to live, and that everything in his apartment was packed in boxes because he was planning to move. **{R. 714-17}**.

Lucius next called a woman from the Rent Mart who testified Lucius came in on January 17th and received a report and map of local rental properties. **{R. 788-91}**. Lucius also called Garrett Copeland, who stated he gave Lucius and Dushun a ride to St. Andrews Road for $20. **{R. 799-808}**. Finally, Lucius's apartment manager confirmed that he was two months behind on rent at the time of the incident. **{R. 813-15}**.

After Lucius rested, Dushun called Charise Glivens, who testified she gave Lucius and Dushun a ride from St. Andrews Road to her apartment. She said they stayed there ten minutes and did not mention anything unusual happening. **{R. 817-21}**. Finally, Dushun called Officer Mead about a photograph found in the Crossroads apartments showing Dushun with a blue bandanna. On cross, Mead noted that the Statens' apartment

at Crossroads was a much shorter distance from where the Statens were dropped off on St. Andrews road than Charise's apartment. **{R. 822-24}**.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN ADMITTING AS AN EXCITED UTTERANCE THE VICTIM'S STATEMENT THAT DUSHUN PULLED A GUN ON HIM THE SUNDAY BEFORE THE INCIDENT; THE STATEMENT NOT ONLY MET ALL THREE REQUIREMENTS OF RULE 803(2), SCRE, BUT WAS OTHERWISE CORROBORATED BY CIRCUMSTANTIAL EVIDENCE.

Appellant first contends that the court erred in admitting as an excited utterance a statement the victim made to his roommate that Dushun had pulled a gun on him the Sunday before the murder. Appellant apparently contends that there was not sufficient proof or corroborating circumstances of a startling event. However, the issue is not preserved. In any event, the statement meets all three requirements for an excited utterance under Rule 803(2), SCRE, and no further corroboration of the "startling event" other than the victim's statement is needed for admissibility. Even if further corroboration was necessary, it was more the present from the victim's demeanor, the fact that the Statens and the victim were present in the area on that Sunday, and the individuals had been involved in repeated confrontations every time they saw each other.

A. Events at trial

As noted before, the victim's roommate Andrew Britt described an argument between the victim and the Statens on the Friday before the Monday incident. During his testimony, he was then asked to describe a conversation with the victim on that Sunday. Andrew noted that Phillip is a "very calm, a calm person", but came into their dorm room on Sunday evening "very hysterical and like scared, kind of scared". After a few futile attempts to get Phillip to tell him what was wrong, Andrew stated "Phill, come on – I know you, what's wrong with you". **{R. 134-35}**.

The solicitor then informed the judge and the defense that he was going to further lay the foundation for an excited utterance, and after Dushun's lawyer objected to a question regarding Phillip's normal demeanor, a bench conference took place. Andrew then described Phillip as normally a "calm, humble, laid back kind of person", but on Sunday evening Phillip was "storm, angry, storm, angry, just temper-high kind of person when he came into the room". Andrew said Phillip was "walking back and forth in the room . . . banging on stuff.":

> ANDREW: I was like, "Phil, just calm down. What's all that for?" And he didn't want to tell me. Then I had to get it out of him, then he finally told me.

At this point, Dushun's lawyer objected, and when the court inquired of the basis, simply stated "objection under the hearsay rule". The objection was overruled and the following occurred:

> ANDREW: He was like, "You know Drew"; I was like, "What?" "They just pulled a fucking gun on me." And he was like, "the niggers we had a – the niggers we had an argument with on Saturday".

{R. 136-37}.

Later, on cross by Lucius's lawyer, Andrew was asked and testified that he told police Phillip said "the small kid pulled out a gun and asked [Phillip] what's up now". Andrew stated that Phillip was referring to Dushun. **{R. 164}**.

B. The issue is not preserved because the specific arguments now made on appeal were not made to the trial court.

As an initial matter, the issue is not preserved. Appellant's lawyer only objected by saying "under the hearsay rule", with no further discussion of specific arguments under the applicable rule of evidence. Appellant's specific arguments now – that the statement did

not involve the shooting itself and was insufficiently proven or corroborated to be admitted – were not made in any fashion to the trial court, despite a specific request for the basis of the objection. **{R. 136-37}**. Moreover, the heart of Appellant's argument on appeal seems to be that there was not clear and convincing evidence of the prior bad act described in the statement. This is of course fundamentally an argument under Rule 404(b), SCRE, and Appellant at no time mentioned that rule, State v. Lyle, or the words "prior bad act".

Since Appellant did not make the specific arguments to the trial court that he now makes on appeal, and thus did not give the trial court an adequate opportunity to address the claims, the issue is procedurally barred from review. See, e.g. In the Interest of Michael H., Op. No. 25529, 2002 WL 31051575 (S.C. filed September 16th, 2002) (noting that a trial court must be given an opportunity to resolve an issue before it is presented to the appellate court); State v. Thomas, 159 S.C. 76, 156 S.E. 169 (general objection on irrelevancy preserved nothing for review); Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 352 S.E.2d 302 (Ct. App. 1986) ("An objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.").

C. General Rules

Rule 803(2), SCRE allows admission of hearsay if: (1) the declarant was under the "stress of excitement" at the time of the statement, (2) the "stress of excitement" was caused by a "startling event or condition", and (3) the statement related to the same "startling event or condition".

The rationale for this rule is that "a person under the sway of excitement precipitated by an external startling event will be bereft of the reflective capacity essential for fabrication". Weinstein's Evidence § 803(2)[01] at 803-79 (1998). See also State v. Blackburn, 271 S.C. 324, 327, 247 S.E.2d 334, 336 (1978). Applicability of the "excited utterance" exception must be viewed under the totality of the circumstances, and the trial court's evidentiary decisions will not be reversed on appeal absent an abuse of discretion. See, e.g. State v. Burdette, 335 S.C. 34, 515 S.E.2d 525 (1999); State v. Brock, 335 S.C. 267, 516 S.E.2d 212 (Ct. App. 1999).

D. As an initial matter, Andrew's testimony clearly meets all three requirements of Rule 803(2), SCRE.

Unquestionably, Phillip's statement to Andrew meets all three conditions of the Rule 803(2), SCRE. Obviously, Phillip's stress or excitement was caused by the event of having a gun pulled on him, and his statement related to that event, as when Andrew asked what was wrong after Phillip was behaving in an uncharacteristically upset manner, Phillip expressly stated that he had just had a gun pulled on him. Phillip's own statement that he was upset by the incident expressly satisfies these two conditions.

Although not argued by Appellant, and thus not preserved for appeal, it is clear also that Phillip was under the stress and excitement when he made the statement. Andrew's description of Phillip, a normally calm person, behaving like a "storm" and pacing back and forth striking things certainly meets the test for "stress of excitement". See, e.g. State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999) (statement was an excited utterance where declarant had just seen his brother shoot an unarmed man and declarant was walking away from the scene hiding the gun under his shirt).

Further, the fact that the statement was made in regard to questioning by Andrew does not preclude its admissibility. Simply because someone is answering a question does not necessarily mean they are not still so under the stress of excitement as to preclude the reflective capacity necessary for fabrication. See United States v. Joy, 192 F.3d 761 (7th Cir. 1999) (fact that person was answering dispatcher's questions does not indicate he was not excited, and it is very possible for someone to be too excited to volunteer pertinent information); United States v. Iron Shell, 633 F.2d 77, 86 (8th Cir. 1980) (asking "what happened" does not destroy the requisite excitement under 803(2)); United States v. Glenn, 473 F.2d 191, 194 (D.C. Cir. 1972) ("Declarations relating to the circumstances of of a violent crime, made by a victim shortly after its occurrence . . . may be admissible although made in response to an inquiry."). The extreme and uncharacteristic agitation demonstrated by Phillip when he made the statement is more than sufficient to overcome the mere fact that he made the statement after his friend asked him what was wrong.

Thus, the trial court did not abuse its discretion in ruling that the statements met the three elements for qualification under Rule 803(2), SCRE.

E. There is no extra requirement that an otherwise admissible excited utterance have additional guarantees of trustworthiness to be admissible under the Confrontation Clause.

In his brief, Appellant contends that "a statement that is alleged to be an excited utterance must have sufficient guarantees of trustworthiness to serve as a substitute for cross-examination". **{Appellant's Brief p. 15}**. Inasmuch as he is contending that additional guarantees of trustworthiness must exist for admissibility under the Confrontation Clause, he is incorrect.

Only if a statement does not fall within a firmly rooted hearsay exception will the court look to whether the statement bears any particularized guarantees of trustworthiness. See State v. Dinkins, 339 S.C. 597, 603 n.1, 529 S.E.2d 557, 560 n.1 (Ct. App. 2000). And, our courts have repeatedly held that the excited utterance exception has been firmly rooted in South Carolina law for centuries, and is sufficient to meet any Confrontation Clause demands. See, e.g. State v. Burdette, 334 S.C. 34, 45, 515 S.E.2d 525, 531 (1999); State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999). As a constitutional matter, there is no need for additional guarantees of trustworthiness once a statement meets the test under Rule 803(2), SCRE.

F. The recent decision in *Crawford v. Washington* does not affect admissibility.

A brief word needs to be said about the recent decision of the United States Supreme Court in Crawford v. Washington, 124 S.Ct. 1354 (2004), which was issued after Appellant filed his brief in this case. Although, as noted earlier, there were no specific Confrontation Clause argument at trial (or really any other specific arguments raised at trial), Respondent feels it should briefly address Crawford given its sweeping effect on the admissibility of hearsay against a defendant in a criminal trial.

In Crawford, the Supreme Court abrogated aspects of Ohio v. Roberts, 448 U.S. 56 (1980), and held that, absent unavailability *and* a prior opportunity for cross-examination, a "testimonial" hearsay statement is barred by the Confrontation Clause regardless of whether it falls within a firmly rooted hearsay exception.

Crawford detailed the history of the Confrontation Clause, and concluded that the principal wrong the Framers intended to address was the English practice of using *ex parte*

affidavits and examinations at trial without an opportunity for confrontation by the accused. Id. at 1363-66. However, this basis for the Court's decision also led them to conclude that the absolute prohibition in Crawford applied only to "testimonial" evidence:

> Where *nontestimonial* hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law – as does Roberts.

Id. at 1374.

Unfortunately, the Supreme Court left for another day the precise definition of "testimonial" – although it did provide at least some guidance. The Court noted that the three "formulations of the core class of testimonial statements" consist of: (1) "*ex parte* in-court testimony or its functional equivalent", (2) "extrajudicial statements . . . contained in formalized testimonial materials", and (3) "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial". Id at 1364. The Court concluded:

> Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations. These are the modern practices with closest kinship to the abuses at which the Confrontation Clause was directed.

Id. at 1374.

With this in mind, it is clear that Phillip's statement to Andrew does not fall within the class of "testimonial" statements. A person's response to his friend when the friend sees the person upset and quite naturally asks what is wrong is clearly in no way kin to the extrajudicial and *ex parte* interrogations at which the Confrontation Clause was directed. If such a natural and frequent conversation among friends and loved ones was testimonial, it would be hard to conceive of any type of statement that was not. Crawford itself noted

that "an accuser who makes a formal statement to the government bears testimony in a sense that a person who makes a causal remark to an acquaintance does not". Id. at 1364.

Indeed, a number of courts since Crawford have already held that statements in various analogous situations were not testimonial. See United States v. Manfre, 368 F.3d 832 (8th Cir. 2004) (statement by coconspirator about substance of communication between conspirators not testimonial); United States v. Reyes, 362 F.3d 536 (8th Cir. 2004) (coconspirator statements are nontestimonial); State v. Rivera, 844 A.2d 191 (Conn. 2004) (statement made in confidence and on own initiative to family member was not testimonial); People v. Williams, 2004 W.L. 1079808 (Mich. Ct. App. May 13th, 2004) (statement by victim to relatives concerning threats by defendant were not testimonial); People v. Moscat, 777 N.Y.S.2d 875 (N.Y. Crim. Ct. 2004) (in victimless CDV case, 911 call is nontestimonial; even though the person it speaking with police, it is the person who initiates the call, not police, and for the purpose of seeking help from immediate peril, and not prosecution); State v. Forrest, 596 S.E.2d 22 (N.C. Ct. App. 2004) (statement by victim to police immediately after crime was not testimonial).

There is no Confrontation Clause issue.

G. Sufficient proof of the startling event can come from the statement itself, but under any standard there was sufficient proof to satisfy admissibility concerns.

In his brief, Appellant contends that there is insufficient proof that Dushun pulled a gun on Phillip that Sunday, other than the hearsay statement itself. He notes that Weinstein has stated that allowing the declaration itself to be sufficient proof of the startling

event "is somewhat unsettling theoretically as an example of a statement lifting itself into admissibility by its own bootstraps". Weinstein's Federal Evidence § 803.04[2][a] p. 803-21 (2nd ed. 1998).

However, Appellant's concern fails on two points. First, Weinstein clearly notes (and, indeed Appellant appears to concede) that the "modern trend" and "prevailing practice" are to consider the declaration itself as sufficient proof of the startling event. Id.; 803App.01[2] at p. 803App.–6. See, e.g. United States v. Brown, 254 F.2d 454 (3rd Cir. 2001) (collecting and citing cases). And this logically makes sense despite any "bootstrapping" concerns – the whole rationale behind the excited utterance exception is that we can trust the content because it was made while under the stress of excitement. If the rationale presumes a statement is reliable because such stress exists, there is no reason to distrust content establishing the startling event as opposed to other content.

Indeed, as Appellant points out, Weinstein has stated:

> In most cases, proof that the event occurred is furnished either by testimony of witnesses other than the declarant, or by circumstantial evidence that something out of the ordinary occurred.

Weinstein's Federal Evidence § 803.04[2][a] p. 803-21 (2nd ed. 1998). However, Appellant overlooks the second clause in that statement – as courts often view the proof that the declarant was in an excited or agitated state as the "circumstantial evidence that something out of the ordinary occurred". See, e.g. United States v. Brown, 254 F.2d 454 (3rd Cir. 2001) (noting that "many courts have held that the appearance, behavior, and condition of the declarant may establish that a startling event occurred"); United States v. Moore, 791 F.2d 566, 570 (7th Cir. 1986) (same); United States v. Hills, 455 F.2d 504, 505 (9th Cir. 1972) (unidentified caller's tone of voice and manner of speaking implicitly established that

a startling event had occurred).

Here, Britt's description, related above, of the normally calm Phillip as angrily pacing about the room and banging on stuff was more than sufficient circumstantial evidence that he had in fact been affected by some startling event.

Second, even if there needed to be some sort of additional corroboration that Dushun pulled a gun on Phillip on Sunday, it is more than present in this case. As described in Respondent's Statement of Facts, there was ample proof of two other gradually worsening confrontations between Phillip and the Statens prior to Sunday. We of course know that Phillip was in the area Sunday as Benedict College was where he lived, but there also is independent testimony from Andrew that the Statens were in the dormitory parking lot on Sunday. During the defense case Lucius conceded that he might have been on campus Sunday. **{R. 133-34; 749}**. There was evidence of street gang involvement, and it is of course common knowledge that street gangs possess and use firearms. Thus, we have independent evidence that both groups were in the same area coupled with independent evidence that every time they saw one another there was a confrontation. Finally, we have the proof of the final confrontation itself, during which there was evidence a gun was produced by Dushun and used against Phillip. There was more than enough corroboration to support admission of the statement.

The issue is without merit.

II. THE TRIAL COURT DID NOT ERR IN EXCLUDING THE TESTIMONY OF LIMEL SIMS'S GIRLFRIEND THAT MAURICE ADMITTED BEING THE SHOOTER, WHERE THE CIRCUMSTANCES OF THE ALLEGED STATEMENT WERE INSUFFICIENTLY CORROBORATED AS TO BE TRUSTWORTHY, AND ANY MARGINAL PROBATIVE VALUE OF THE SHOOTER'S IDENTITY IN THIS ACCOMPLICE LIABILITY CASE WAS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF CONFUSION OF THE ISSUES.

Appellant next contends that the trial court erred in refusing to allow as a declaration against penal interest a statement allegedly made to the girlfriend of codefendant Limel Sims. Supposedly, the girlfriend would testify that codefendant Maurice Sanders told her he shot the victim as she took him to the bus station, and that Maurice asked her to help him look for the gun where he had hidden it after the murder. However, given the totality of the circumstances, it cannot be said that the trial court abused its discretion in finding the statements against interest to be insufficiently trustworthy for admission to exculpate the defendants.

A. Events at trial

The issue revolves around the two statements given by Michele Buff, the girlfriend of Limel Sims, the guy in the Northface jacket identified by a number of witnesses as the shooter. In her first statement to police, Michelle stated that Limel was living with Maurice, that Limel asked her to pick him up around 9:30 or 10:00 p.m. on Bull Street, that Limel told her about a fight because some guys at Benedict were "running at the mouth" and "talking shit to me and [Maurice]", and that Maurice had run away because the police were coming. Michelle told police that Limel was wearing a black Northface jacket. She claimed that she took Maurice to the bus station the next day, and Limel that Thursday. Michelle said she did not know why the two left, and stated she had not talked with them since. Michelle admitted seeing Maurice and Mel with guns. **{R. 959-61}**.

Two days after she had given one statement to police, Michelle claimed that Maurice had asked her to take him to the bus station and had confessed to shooting someone after the guy started "talking shit". Michelle also said that Maurice had asked her to help him look for the murder weapon where he had hidden it near Benedict, but they could not find it. Contrary to her first statement, Michelle admitted speaking to Limel in Jacksonville, and said that both Limel and Maurice were down there. **{R. 957-58}**.

During pre-trial proceedings, the State moved to preclude any reference in opening statements to a supposed hearsay statement made by a codefendant that he shot the victim, at least until a hearing could be held on the statement. **{R. 4-5}**.

The defense responded that under Rule 804(b)(3), SCRE, if the person made the statement and there is corroborating evidence, it is admissible. The defense noted that the corroboration depends on whether the statement is actually made, and noted that an eyewitness would identify Maurice as the triggerman. **{R. 6-7}**.

The solicitor responded that under an accomplice liability theory, while the State needed to prove that malice of the triggerperson, the actual identity of that person was irrelevant as long as it could prove the defendants were aiding and abetting that person. The State noted that since it was stipulating neither Staten pulled the trigger, the identity of the shooter was not relevant as long as the State could show he acted with malice. **{R. 7-10}**.

The State went on to note that the proposed witness to Maurice's alleged statement was the girlfriend of Limel Sims, whom the State believed was the shooter. According to the State, the girlfriend only came forward with this information after she had been

interviewed by police and after her boyfriend Limel was charged. Also, Maurice was placed in custody only minutes after the shooting, and his gunshot residue test was negative. The solicitor noted that the defense was just trying to confuse the jury. **{R. 9-11}**.

In response, the defense argued that the identity of the shooter was relevant as the State had to establish a relationship between the shooter and the defendants. The court then noted that the issue would be off limits in opening until a hearing could be held. **{R. 11-14}**.

As noted in the Statement of Facts, Dushun in his statement to police stated that Maurice was the shooter. **{R. 469-71}**.

Brandon McCants also testified for the defense that Maurice Sanders was the shooter. However, McCants admitted he did not come forward until months after the fact, and testified he was sure the shooter used a semiautomatic pistol, even though no casings were found at the scene. **{R. 618; 623-24; 631; 657}**.

After Lucius had rested and during Dushun's case, the issue was raised again. The court initially inquired that since the State had not contended that either of the Statens had pulled the trigger whether it made any difference if the shooter was Maurice (in the racing jacket) or Limel (in the Northface jacket). The defense responded that the Statens had withdrawn, and it "made all the difference" who the identity of the shooter was in determining whether the defendants were associated with him at the time of the murder. The State reiterated that it only had to prove the malice of the killer, but that killer's identity was not necessary as long as the jury was satisfied he acted maliciously. **{R. 826-28}**.

As the colloquy proceeded, the State noted that it did not care whether the shooter

was Maurice or Limel, but that from a strategic perspective it knew the jury would want a theory. The State contended it was just trying to keep this evidence out because it muddied the waters. The defense responded that if the jury decided the defendants were not accomplices, then it would be extremely relevant that someone else shot and killed the victim. **{R. 829-33}**.

When asked what corroboration was available, the defense responded that there was the eyewitness testimony of Brandon McCants, Dushun's statement, and testimony (presumably from Brandon and Lucius) that the Statens had withdrawn from the confrontation at the time of the shooting. The defense also noted that the statement was corroborated by the fact that Maurice asked Limel's girlfriend Michelle to take him to the bus station and to look for the murder weapon. The court noted that, excluding Michelle's statement itself, all that remained was Brandon McCants, who had reliability problems in his failure to come forward sooner, Dushun, who obviously had a motive to lie, and the physical evidence that Maurice had no gunshot residue. The court concluded that those issues meant that the test for trustworthiness was not met. **{R. 834-38}**.

B. General Rules

Of course, Rule 804(b)(3), SCRE permits the introduction of a hearsay statement against interest made by an unavailable declarant, and Maurice was unavailable due to the exercise of his Fifth Amendment rights. However:

> A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Id.

The criminal defendant bears a "formidable burden" in meeting the corroboration requirement. The trial court has discretion to decide the issue and should consider the question in view of the totality of the circumstances. The judge's decision should not be reversed absent an abuse of that discretion. State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001); State v. McDonald, 346 S.C. 495, 552 S.E.2d 284 (2001).

Our state supreme court has noted that the rule "does not require that the *information within the statement* be clearly corroborated, it means only that there be corroborating circumstances which clearly indicate the trustworthiness of the statement itself, i.e., that the statement was actually made." State v. Kinloch, 338 S.C. 385, 526 S.E.2d 705 (2000) (quoting Weinstein's Federal Evidence). Our court has noted that while the corroboration rule "goes not to the truth of the statement's contents, but rather to the making of the statement . . . [i]n many instances it is not possible to separate these two considerations". State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000).

What meets that corroboration requirement, and indeed what *can* meet that corroboration requirement, is not always crystal clear, however. Weinstein notes that the "case law has identified three circumstances that are particularly relevant": (1) whether the involved parties have a close relationship, (2) whether the statement was made after the declarant was given his Miranda warnings, and (3) whether there is evidence the statement was made to curry favor with authorities. Weinstein's Federal Evidence § 804.06[5][b] p. 804-58.2 and 58.3 (2nd ed. 1998).

Weinstein also notes that it is the trustworthiness of the statement, not the witness or the declarant, that is in issue, and evidence the declarant was near the scene with a motive or background to connect him to the crime is often sufficient. According to

Weinstein, it is improper to focus on the credibility of the in-court witness to the declarant. Weinstein's Federal Evidence § 804.06[5][c] (2nd ed. 1998).

However, in practice various courts have considered all sorts of varying factors including the truthfulness of the statement as well as the probable veracity of the witness to the declarant as well as the declarant himself. See e.g. United States v. Groce, 954 F.2d 821 (2nd Cir. 1992) (co-actor's statements as to his commission of the shooting and possession of the gun as opposed to defendant were not trustworthy, where witness gave several contradictory statements, and there was evidence co-actor was afraid of defendant); United States v. Bandahar, 954 F.2d 821 (2nd Cir. 1992) (coconspirators statement lacked corroboration of both declarant's trustworthiness and statement's trustworthiness); United States v. Silverstein, 732 F.2d 1338 (7th Cir. 1984) (confession to crime by pal of defendant not corroborated; pal was in jail with three consecutive life terms); United States v. Alvarez, 584 F.2d 694 (5th Cir. 1978) (trustworthiness analysis looks at two elements, the probable veracity of the in-court witness, and the reliability of the out-of-court declarant).

Similarly, our state court decisions have considered a multitude of factors in deciding whether sufficient corroboration existed, including the trustworthiness of the in-court witness, the trustworthiness of the declarant, the sufficiency of proof that the statement was actually made, and the trustworthiness of the statement's contents. See State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001) (testimony of jail roommate as to letter allegedly delivered by declarant claiming the declarant killed the victim out of jealousy was not corroborated; there was no other evidence that letter actually existed (and thus the statement made), as prison guard could not recall receiving such a letter); State

v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) (hearsay statements of co-actor sufficiently corroborated; three witnesses had heard him confess to the crime, and eyewitness saw the co-actor at the scene with a shotgun, and details in the content of the statements indicated that the speaker had extensive knowledge of the crime); State v. Kinloch, 338 S.C. 385, 526 S.E.2d 705 (2000) (statement not corroborated where both the declarant and the in-court witness were smoking crack, which reflects adversely on the trustworthiness of both, as well as the fact that both were in separate prisons when the conversation supposedly took place; although an eyewitness somewhat corroborated the alleged events, it was not "clear"); State v. Forney, 312 S.C. 353, 468 S.E.2d 641 (1996) (admission of codefendant to five other people not corroborated, where no independent evidence corroborated the substance of the statements, and one person, who had more credibility because he was a friend of the codefendant, said codefendant denied the statements; further, the statements were too vague to exculpate the defendant); State v. McKnight, 321 S.C. 230, 467 S.E.2d 919 (1996) (insufficient corroboration for statements made by person alleged to be actual culprit; the in-court witness had a motive to lie against the declarant and admitted the declarant may have been joking, and declarant gave three different versions); State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992) (hearsay statements of three minors alleged to be with defendant at time of crime were corroborated, where all three statements were identical, and a number of eyewitnesses had seen the three in the victim's car without defendant).

C. Given the totality of these circumstances, it cannot be said that the trial court abused its discretion in finding the statements against interest to be insufficiently trustworthy for admission to exculpate the defendants.

Despite the somewhat muddled nature of the standard for corroboration, it is clear in this case that in light of the totality of the circumstances, the trial court did not commit an abuse of discretion.

It is true, of course, that all eyewitnesses placed Maurice at the scene with Limel, and that one eyewitness stated that Maurice was the shooter. Cf. McDonald, *supra*. However, when everything is broken down, it is clear under the totality of circumstances that exclusion was proper.

With regard to whether the statement was actually made, all we have is Michelle Buff's proposed testimony. There is no additional direct corroboration of the fact the statement was made. See Wannamaker, *supra*.

With regard to the trustworthiness of the in-court witness, Michelle of course was the girlfriend of Limel with a motive to lie for him and blame Maurice. Moreover, she lied in her first statement to police about the whereabouts of Maurice and Mel as well as about the supposed admissions of Maurice anyway. See McKnight, *supra* (in-court witness had motive to lie and stated declarant was joking); Kinloch, *supra* (smoking crack and in jail).

With regard to the trustworthiness of the declarant, and the substance of the statement itself, the physical evidence that Maurice's gunshot residue test was negative despite his quick apprehension by police weighs against his admission to the shooting. Moreover, although Maurice's statement to Michelle included the detail that some guy was "talking shit" and Maurice shot him, this detail is not so confirming of the crime scene as

to be corroborative, especially given that it is undisputed Maurice was in fact at the scene regardless. Cf. McDonald, *supra*.

With regard to the trustworthiness of Brandon McCants's eyewitness testimony and Dushun's statement identifying Maurice as the triggerman, McCants came forward long after the crime and was associated with the Statens. Moreover, he was wrong about whether a semiautomatic pistol was used, given that no shell casings were found despite rapid police response. And, of course, the GSR test of Maurice is physical evidence that disputes Brandon's version. Finally, obviously Dushun's statement is self-serving and its utility for determining trustworthiness is suspect.

Given the totality of these circumstances, it cannot be said that the trial court abused its discretion in finding the statements against interest to be insufficiently trustworthy for admission to exculpate the defendants.

D. Under the facts of this case, the probative value of any testimony identifying Maurice as the shooter was diminished to the point where exclusion was proper under Rule 403, SCRE.

In any event, the statements were properly excluded as irrelevant. While the trial court did not expressly rule on relevance, the solicitor did argue that the statements were muddying the waters and confusing the jury, and, in any event, this Court may affirm on any ground in the record. Rule 220(c), SCACR.

As an initial matter, for the various reasons expressed in the preceding section raising serious questions about the trustworthiness of the alleged statements, the evidence was properly excluded under Rule 403, SCRE. Rule 403, of course, provides that relevant evidence may be excluded if the probative value is substantially outweighed by the danger

of unfair prejudice, confusion of the issues, or misleading the jury. Weinstein notes that the credibility of the in-court witness may in fact be a valid consideration in determining probativeness under Rule 403. Weinstein's Federal Evidence § 804.06[6][a] pp. 804-59 & 804-60 (2nd ed. 1998).

Additionally, the solicitor had a valid point when he argued that under the facts of this case whether the shooter was Maurice or Limel was not sufficiently probative of the real issues. The State conceded throughout the case that neither Staten was the shooter; thus, as long as the State proved the shooter was acting with malice and the Statens were accomplices, showing that Maurice as opposed to Limel was the shooter would do little if anything to exculpate the defendants. See generally Forney, 312 S.C. 353, 468 S.E.2d 641 (vague statements by codefendant did little to exculpate the defendant).

Further, and more importantly, there was absolutely nothing at all in the facts of this case to distinguish Maurice from Limel for purposes of the accomplice liability of the Statens. The bulk of the testimony, including from Lucius himself as well as Brandon McCants, was that Maurice and Limel were present together with one another. **{R. 194-204; 245-62; 614-26; 697-99}**. Indeed, even Dushun in his statement and Michelle in her statements placed Limel and Maurice together. **{R. 476-77; 957-61}**.

Either the Statens were associated with these fellows to the point of accomplice liability, or they were not. Defining one or the other as the triggerperson does nothing to aid the jury in this decision, as unquestionably both were at the scene together. The potential of confusion from such questionable evidence substantially outweighed the limited probative value under the facts of this case.

E. Any error in exclusion was harmless.

Finally, for similar reasons expressed in the preceding section, any error in admission was harmless. Indeed, the case depended entirely on accomplice liability, and even both Appellants either told police or testified that Maurice and Limel were together on the day of the incident. Given their connection, this small bit of testimony from Michelle about Maurice's supposed admission would do little to aid the defendants in their quest to show they were not associated with the shooter to the point of accomplice liability.

III. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN NOT CHARGING MERE SUSPICION AND MERE ASSOCIATION, WHERE, CONSIDERING THE CHARGE AS A WHOLE, ITS INSTRUCTIONS ON MERE PRESENCE AND ACCOMPLICE LIABILITY WERE SUFFICIENT TO CONVEY THE REQUESTED PRINCIPLES.

Appellant finally contends that the trial court erred in denying his request to charge on mere association and mere suspicion. However, any issue as to mere suspicion is only preserved as to Lucius, and any issue as to mere association is only preserved as to Dushun. In any event, the judge's charges on mere presence and accomplice liability were more than sufficient to convey the requested principles.

A. Any issue as to mere suspicion is only preserved as to Lucius, and any issue as to mere association is only preserved as to Dushun.

At trial, only Lucius requested the mere suspicion language and only Lucius complained after the judge's instruction that mere suspicion had not been charged. **{R. 853-54; 942 ll. 13-14}**. Only Dushun requested the mere association charge, and only Dushun complained after the judge's instruction that mere association had not been charged. The judge ruled he thought his charged sufficiently covered the request. **{R. 862-63; 943 ll. 2-6}**.

As argued throughout this brief, this joint trial was not a situation where an objection by one defendant was automatically considered an objection by both. Indeed, after Lucius finished his requests during the charge conference, the attorney for Dushun asked, "we ready for mine now?", and noted that only some of his requests were the same as those presented by Lucius. **{R. 861 ll. 22-25}**. Thus, any issue as to mere suspicion is only preserved as to Lucius, and any issue as to mere association is only preserved as to Dushun. See generally, e.g. State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (1999) (to preserve objection to charge, party must raise the issue at trial).[1]

B. There was no reversible error in the refusal of the judge to charge mere suspicion.

First, the judge did not commit reversible error in failing to charge, as requested by Lucius, an instruction that "you cannot convict on mere suspicion". **{R. 853, 856}**. The defense based its request in State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). Schrock reversed the denial of a directed verdict where the evidence only showed that the defendant was in the area and footprints found where the defendant admitted walking were similar to those at the crime scene. Id. In it, the Court noted that the trial judge should grant a directed verdict when the evidence merely raises a suspicion the accused is guilty. Id.

There was no error in this case. The mention of the "mere suspicion" doctrine in the context of instructing trial judges on how to view a directed verdict motion did not create

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[1] Even if Lucius is deemed to have raised mere association, he told the judge prior to charge that the judge's proposed charge encompassed his mere presence request, and Lucius did not object on the issue after the charge. **{R. 855-56}**. Thus, the issue is not preserved. Ford, *supra* (party must object to incomplete charge).

a mandatory jury instruction to be given in every case. Here, the trial court repeatedly charged that the State had the burden of proving guilt beyond a reasonable doubt, and that the jury should resolve any reasonable doubt in favor of the defendant. **{R. 930; 931 ll. 20-21; 932 ll. 1-11}**. The judge also charged the jury that mere presence at the scene was insufficient for criminal liability, and that the jury had to find the defendants "intentionally or through a common plan" aided or abetted the commission of the crime. **{R. 936}**.

Viewing the charge as a whole, the combination of an instruction that the jury had to resolve any reasonable doubt in favor of the defendant along with a mere presence charge was more than sufficient to convey such a basic notion in American society that mere suspicion is insufficient for a finding of guilty. There was no reversible error. See, e.g. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) (viewing charge as a whole, judge's charge was sufficient to convey the applicable law).

C. There was no reversible error in the refusal of the judge to charge mere association.

Next, there was no reversible error in failing to give a charge on mere association. On appeal, Appellant complains of the absence of the following instruction:

> Similarly, the mere fact that the defendant may have associated with such person or persons and discussed common aims and interests does not necessarily establish proof of an intent to aid criminal conduct by such person or persons.

{Brief of Appellant p. 21}.

In State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998), the defendant also claimed that the trial court failed to give a mere association charge. The court noted that the judge gave a mere presence charge and also clearly explained that the prosecution had to prove

every element of the crime. The court also reasoned that the judge extensively instructed the jury on the requisite criminal intent, and concluded that the charge as a whole was sufficient. Id.

The same result in Kelsey is warranted by the somewhat analogous situation here. The judge gave the following charge on accomplice liability:

> The law says that a person who was present at the scene of a crime and intentionally or through a common plan aided, abetted, or assisted in the commission of that crime *through some overt act* is guilty as an accomplice. To be liable as an accomplice, the defendants must have knowledge of the principal's criminal conduct.
>
> Now, mere presence at the scene of the crime is not sufficient to establish – to establish guilt as an accomplice. Now, when we say someone does something intentionally, that means wilfully, intending the result which actually occurs and not accidentally or involuntarily.
>
> Now party is not liable under a theory of accomplice liability if he withdraws entirely from the unlawful act before the homicide is committed.

{R. 936 ll. 11-22} (emphasis added).

Apparently, from reading the requested charge set forth in the Brief of Appellant, the Statens' present complaint is that the judge's charge did not encompass enough the concept that merely hanging out with the shooter and discussing common criminal goals was not necessarily enough to establish liability as an aider and abetter for the specific crime. Viewing this charge as a whole, it is more than clear that the concept was *completely* covered.

First, the judge gave a mere presence charge, which is certainly the near identical brother of the mere association charge.

Second, the judge specifically charged the jury that the defendants had to aid, abet,

or assist the commission of the crime with some "overt act". Given that the judge extensively defined "intentionally", this charge obviously differentiates between one who actively does something to help out while intending the crime be committed, and one who does nothing more than just hang out and talk about it.

Third, given that the judge charged that one who withdraws is not guilty, again the jury was clearly instructed that doing nothing more than hanging out is not sufficient for guilt, and that one has to be actively participating at the time of the offense for conviction.

In view of the entire instruction given by the trial judge, it cannot be said that there was prejudicial error from the failure to charge mere association. See generally State v. Weaver, 265 S.C. 10, 217 S.E.2d 31 (1975) (no reversible error where charge given by judge was essentially the same as requested by appellant).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment and convictions of the trial court should be affirmed.

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ATTORNEYS FOR RESPONDENT.

August 6, 2004

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Henry McKellar, Circuit Court Judge

THE STATE,

Respondent,

v.

DUSHUN STATEN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEY FOR RESPONDENT

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PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Final Brief of Respondent***, dated August 6, 2004, on Appellant by depositing three (3) copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Esquire
South Carolina Office of Appellate Defense
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I further certify that I have served all parties required by Rule to be served.

This 6th day of August, 2004.



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ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Dushun Staten, Appellant.

Appeal From Richland County
Henry L. McKellar, Circuit Court Judge

Opinion No. 3955
Heard February 9, 2005 – Filed March 7, 2005

AFFIRMED

Assistant Appellate Defender Robert M. Dudek, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, all of Columbia; and Solicitor Warren Blair Giese, of Columbia, for Respondent.

ANDERSON, J.: Dushun Staten appeals his convictions for murder and lynching in the first degree. He argues the trial court erred in (1)

admitting a prior statement by the decedent; (2) barring evidence regarding an alleged confession; and (3) refusing to charge the jury on the law of mere association and mere suspicion. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

On January 15, 2001, Phillip Lee, Jr., a student of Benedict College and a reputed gang member of the Crips, was gunned down on Benedict's campus. Brothers Lucius and Dushun Staten were indicted for the offenses of murder and lynching in the first degree for this crime. They were tried together in 2002. The jury found Dushun and Lucius guilty of lynching in the first degree, but only Dushun guilty of murder.[1] The trial court sentenced Lucius to fifteen years, suspended upon the service of eight years for lynching. The court sentenced Dushun to thirty years for murder and ten years for lynching, to run concurrently.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. Wood, Op. No. 3900 (S.C. Ct. App. filed December 6, 2004) (Shearouse Adv. Sh. No. 47 at 74). This court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000); State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003). A trial court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). An abuse of discretion occurs

[1] The trial court declared a mistrial on Lucius's charge for murder.

when the trial court's ruling is based on an error of law. State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004).

The appellate court should examine the record to determine whether there is any evidence to support the trial court's ruling. See Wilson, 345 S.C. at 6, 545 S.E.2d at 829. If there is any evidence in the record, the appellate court should affirm. Id.

LAW/ANALYSIS

I. Statement Made by the Decedent

Dushun claims the trial court erred in admitting Andrew Britt's testimony that Lee told him that Dushun pulled a gun on him shortly prior to the incident. We disagree.

Andrew Britt, Lee's cousin and Benedict roommate, testified that on the evening before the shooting, Lee, normally a "very calm," "laid back kind of person," arrived in his dorm room "very hysterical and like scared." Britt asked: "Phil, what's wrong with you?" Though Lee avoided answering Britt's questions for a while, Lee eventually confessed that "they just pulled a . . . gun on me." When Britt asked who "pulled" the gun on him, Lee declared: "The niggers we had a[n] argument with on Saturday."[2]

Dushun timely objected to this testimony based on the hearsay rule, but the trial court overruled the objection. Later, on cross-examination by Lucius's attorney, Britt stated that Lee actually said, "The small kid pulled out a gun and asked . . . what's up now." Britt believed Lee was specifically referring to the "little brother," Dushun.

---

[2] Britt stated he was present when Lee and the Statens had a confrontation on the Saturday before the shooting.

A. Efficacy of Crawford v. Washington[3]

The Confrontation Clause of the Sixth Amendment guarantees an accused the right "to be confronted with the witnesses against him" in a criminal prosecution. U.S. Const. amend. VI. The provision is applicable to the states under the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400 (1965). The South Carolina constitution provides the same protection to a defendant. S.C. Const. art. I, § 14.

The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and ensures that convictions will not result from testimony of individuals who cannot be challenged at trial. California v. Green, 399 U.S. 149 (1970); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004). The Confrontation Clause guarantees the accused the right to confront those testifying against him in court and further defines the scope of the admissibility of statements against him made by witnesses out-of-court. See Coy v. Iowa, 487 U.S. 1012 (1988). A defendant exercises his right of confrontation through cross-examination, which has been described as the "greatest legal engine ever invented for the discovery of truth." Green, 399 U.S. at 158 (internal quotations omitted).

For nearly twenty-five years, the question of whether an unavailable witness's prior statements could be used against a criminal defendant at trial was governed by Ohio v. Roberts, 448 U.S. 56 (1980):

> [W]hen a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate "indicia of reliability." Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness.

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[3] 541 U.S. 36, 124 S.Ct. 1354 (2004).

Id. at 66. Thus, under Roberts, an unavailable witness's out-of-court statement was admissible if it: (1) fell within a firmly rooted exception to the hearsay rule; or (2) contained such particularized guarantees of trustworthiness that adversarial testing of the statement through cross-examination would add little to the assessment of the reliability of the evidence.

In March 2004, the Supreme Court concluded that the long-standing Roberts rule was untenable. The Court, in Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004), announced a new test to determine the admissibility under the Confrontation Clause of hearsay offered against the accused. Crawford was convicted of assault and attempted murder. Over his confrontation objection, the prosecution was allowed to offer a recorded statement his wife made to the police in which she appeared to contradict Crawford's claim that he attacked the victim in self-defense. Because the wife herself was under suspicion of facilitating the assault, her statement was admitted for its truth under Washington's hearsay exception for declarations against penal interest. This exception required the prosecution to show that the declarant was unavailable to testify, and due to that unavailability, Crawford did not have an opportunity to cross-examine his wife about her out-of-court statement. The Court reversed Crawford's conviction. Crawford changes the Court's previous confrontation analysis.

Crawford traced the development of Confrontation Clause jurisprudence, beginning with English common law and extending to recent decisions made by state and federal courts throughout the country. As a threshold matter, the Supreme Court's analysis identified the "principal evil" which the Confrontation Clause was intended to deter, "the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence against the accused." Id. at ___, 124 S.Ct. at 1363. The Court rejected the view that the regulation of out-of-court statements could be accomplished solely by the rules of evidence. Id. at __, 124 S.Ct. at 1364.

The Crawford Court clarified the Confrontation Clause "applies to 'witnesses' against the accused—in other words, those who 'bear testimony.'" Id. at __, 124 S.Ct. at 1364. "Testimony" is typically a solemn

declaration or affirmation made for the purpose of establishing or proving some fact." Id. (internal quotations omitted). "An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not. Id.

With respect to testimonial hearsay, at least, the Supreme Court overruled its previous decision in Roberts to maintain consistency with the Framers' intent. Id. at ___, 124 S.Ct. at 1374; see also Thomas J. Reed, Crawford v. Washington and the Irretrievable Breakdown of a Union: Separating the Confrontation Clause from the Hearsay Rule, 56 S.C. L. Rev. 185, 216 (2004) ("In Crawford v. Washington, the United States Supreme Court finally overruled Ohio v. Roberts, divorcing the Confrontation Clause and the hearsay rule because of an irreconcilable breakdown of the relationship.") (footnotes omitted). The unpardonable vice of the Roberts test is "its demonstrated capacity to admit core testimonial statements that the Confrontation Clause plainly meant to exclude." Id. at __, 124 S.Ct. at 1371. The Court concluded:

> Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law--as does Roberts, and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.

Id. at ___, 124 S.Ct. at 1374.

In rejecting the Roberts "indicia of reliability" test, the Court held that the Sixth Amendment bars an out-of-court statement by a witness that is testimonial in nature unless the witness is unavailable and the defendant had a prior opportunity to cross-examine him. Id. at ___, 124 S.Ct. at 1374. "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." Id. at ___, 124 S.Ct. at 1374. "For

testimonial statements, the Court figuratively erected a 'stop sign' as to admissibility in the absence of confrontation." Robert P. Mosteller, Crawford v. Washington: Encouraging and Ensuring the Confrontation of Witnesses, 39 U. Rich. L. Rev. 511, 525 (2005). "For statements in this category, [Crawford] firmly rejected the 'reliability' or 'trustworthiness' mode of analysis adopted by Ohio v. Roberts." Id.

The Court decided to "leave for another day any effort to spell out a comprehensive definition of 'testimonial.'" Crawford, 541 U.S. at ___, 124 S.Ct. at 1374. However, the Court provided three "formulations of [the] core class of testimonial statements":

> Various formulations of this core class of "testimonial" statements exist: "ex parte in-court testimony or its functional equivalent--that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially"; "extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions"; "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." . . . .
>
> Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard.

Id. at __, 124 S.Ct. at 1364 (citations omitted). Although the Court declined to settle on a single formulation, it noted: "Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations. These are the modern practices with closest kinship to the abuses at which the Confrontation Clause was directed." Id. at ___, 124 S.Ct. at 1374. In contrast to these examples, casual statements to an acquaintance are not testimonial. Id. at ___, 124 S.Ct. at 1364. Further, business records or

statements in furtherance of a conspiracy are nontestimonial. Id. at ___, 124 S.Ct. at 1367.

B. Testimonial vs. Nontestimonial

In the wake of the Crawford decision, the crucial inquiry is whether a particular statement is testimonial or nontestimonial. Many courts are grappling with the distinction Crawford created between testimonial and nontestimonial hearsay. See United States v. Saget, 377 F.3d 223 (2d Cir. 2004); United States v. Corley, 348 F. Supp. 2d 970 (N.D.Ind. 2004); Thomas J. Reed, Crawford v. Washington and the Irretrievable Breakdown of a Union: Separating the Confrontation Clause from the Hearsay Rule, 56 S.C. L. Rev. 185 (2004). "In determining whether a statement is testimonial or non-testimonial, courts are consistently applying the Crawford two-pronged analysis to otherwise admissible hearsay statements: (1) Was the statement made to a governmental agent (or in response to questioning from a governmental agent)? (2) Would the declarant expect his/her statement to later be used at trial?" Allie Phillips, A Flurry of Court Interpretations: Weathering the Storm after Crawford v. Washington, 38-Dec Prosecutor 37 (Nov/Dec 2004).

1. Testimonial Statements

Courts are attempting to define the types of hearsay that constitute testimonial statements. The Colorado Court of Appeals explained that testimonial statements under Crawford will generally be (1) solemn or formal statements (not casual or off-hand remarks); (2) made for the purpose of proving or establishing facts in judicial proceedings (not for business or personal purposes); (3) to a government actor or agent (not to someone unassociated with government activity). People v. Compan, 100 P.3d 533 (Colo. Ct. App. 2004), cert. granted (Oct. 25, 2004). "[S]tatements cited by the [Crawford] Court as testimonial share certain characteristics; all involve a declarant's knowing responses to structured questioning in an investigative environment or a courtroom setting where the declarant would reasonably expect that his or her responses might be used in future judicial proceedings." United States v. Saget, 377 F.3d 223, 228 (2d Cir. 2004); see also United

States v. Saner, 313 F. Supp. 2d 896 (S.D.Ind. 2004) (holding statements made in response to questioning outside of the courtroom by Department of Justice prosecutor were testimonial). The Supreme Court of Georgia, in Moody v. State, 594 S.E.2d 350 (Ga. 2004), held that "police interrogations," as delineated in Crawford as testimonial, include the field investigation of witnesses shortly after the commission of a crime. Id. at 354 n.6; cf. Hiibel v. Sixth Judicial Dist. Court of Nevada, 124 S.Ct. 2451, 2463 (2004) (Stevens, J., dissenting) ("Surely police questioning during a Terry stop qualifies as an interrogation, and it follows that responses to such questions are testimonial in nature.").

United States v. Cromer, 389 F.3d 662, 675 (6th Cir. 2004), found that "[a] statement made knowingly to the authorities that describes criminal activity is almost always testimonial" and thus concluded that the confidential informant's statement to the police wherein the CI implicated the defendant in criminal activity constituted testimonial hearsay. The Sixth Circuit Court of Appeals further noted that statements made to the authorities, who will use them in investigating and prosecuting a crime, made with the full understanding that the statements will be so used, are testimonial.

"If an out-of-court statement is taken by a government agent (police officer, prosecutor, child protective services worker employed by the state), the statement will be considered testimonial so long as the witness reasonably could expect that statement to be used at a later trial." Phillips, 38-Dec Prosecutor at 37.

In United States v. Nielsen, 371 F.3d 574 (9th Cir. 2004), the defendant's girlfriend made statements to the police that incriminated the defendant during the service of a search warrant at their mutual residence. The police asked the girlfriend who had access to the floor safe where the methamphetamine was found. She replied that the defendant did. The Ninth Circuit Court of Appeals found the statements were testimonial.

United States v. McClain, 377 F.3d 219 (2d Cir. 2004), discussed the testimonial aspect of a plea allocution: "In light of [the] examples cited by the

[Crawford] Court as testimonial, it is clear that a plea allocution constitutes testimony, as it is formally given in court, under oath, and in response to questions by the court or the prosecutor." Id. at 221; see also People v. Woods, 779 N.Y.S.2d 494 (N.Y. App. Div. 2004) (finding that admission of robbery accomplice's plea allocution into evidence, following accomplice's refusal to testify on constitutional grounds, violated defendant's Sixth Amendment confrontation rights because plea allocutions are among the core testimonial statements that the Confrontation Clause plainly meant to exclude).

City of Las Vegas v. Walsh, 91 P.3d 591 (Nev. 2004), recognized that an affidavit prepared by a registered nurse, in connection with the drawing of blood for use in evidence regarding intoxication, was testimonial, despite the nurse's apparent private status. The Supreme Court of Nevada emphasized that such an affidavit is "prepared solely for the prosecution's use at trial." Id. at 595.

2. Nontestimonial Statements

Courts are beginning to formulate case law defining what nontestimonial statements entail. "[S]tatements made to family, friends, and acquaintances without an intention for use at trial have consistently been held not to be testimonial, even if highly incriminating to another." Robert P. Mosteller, Crawford v. Washington: Encouraging and Ensuring the Confrontation of Witnesses, 39 U. Rich. L. Rev. 511, 540 (2005). Private conversations between confidants have been found to be nontestimonial.

In United States v. Manfre, 368 F.3d 832, 838 n.1 (8th Cir. 2004), the Eighth Circuit Court of Appeals ruled that Crawford was inapplicable because the statements "were made to loved ones or acquaintances and are not the kind of memorialized, judicial-process-created evidence of which Crawford speaks."

State v. Blackstock, 598 S.E.2d 412 (N.C. Ct. App. 2004), involved extended statements made by a victim fatally shot during a robbery to his wife and daughter while in the hospital. The Court of Appeals of North

Carolina concluded the statements were nontestimonial. The statements were made during personal conversations that took place at the hospital over a series of several days after the shooting and at a time when the victim's physical condition was improving and therefore would not have been anticipated by him to be used prosecutorially.

In State v. Rivera, 844 A.2d 191 (Conn. 2004), an unavailable declarant's statement to his nephew, admitting his participation with defendant in a burglary that had given rise to a homicide, was found to be nontestimonial because it failed under the most expansive test articulated by Crawford: an objective witness would not reasonably believe that the statement would be available for use at a later trial. The declarant made the statement in confidence and on his own initiative to a close family member, almost eighteen months before the defendant was arrested and more than four years before his own arrest. The Supreme Court of Connecticut held: "In light of these circumstances, [the declarant's] communication to . . . his nephew clearly does not fall within the core category of ex parte testimonial statements that the court was concerned with in Crawford." Id. at 202.

In People v. Shepherd, 689 N.W.2d 721 (Mich. Ct. App. 2004), the codefendant had made spontaneous, unprompted statements to his relatives about his role in an offense. The statements were made in a custodial setting and were overheard by jail guards. The Court of Appeals of Michigan explained the statements were not testimonial in nature, stating the declarant could not have reasonably believed that the statements would later be used at a trial.

The Supreme Court of Georgia, in Demons v. State, 595 S.E.2d 76 (Ga. 2004), articulated that a murder victim's statements to his friend, made during an incident involving the defendant several weeks prior to the murder, to the effect that the defendant was going to kill him, were not testimonial in nature. Thereafter, the court addressed a similar issue in Watson v. State, 604 S.E.2d 804 (Ga. 2004), and found statements that an alleged murder victim made to three close friends over approximately ten years were not testimonial. The statements concerned threats by the defendant and episodes of physical and mental abuse.

In People v. Cervantes, 12 Cal. Rptr. 3d 774 (Cal. Ct. App. 2004), evidence of one defendant's incriminating hearsay statement, which also implicated codefendants in a murder prosecution, was nontestimonial. The declarant made the statement to a friend of long standing in the context of a request for medical assistance from the friend, and, given that the friend was afraid to testify since she knew that all the defendants were gang members, the statement was made without any reasonable expectation that it would be used at a later trial.

In People v. Griffin, 93 P.3d 344, 369 (Cal. 2004), the Supreme Court of California held a child murder victim's statement to a school friend made on the day that the crime occurred that the "defendant had been fondling her for some time and that [the victim] intended to confront him if he continued" was not testimonial.

The Court of Criminal Appeals of Texas, in Woods v. State, 152 S.W.3d 105 (Tex. Crim. App. 2004), analyzed the co-defendant's out-of-court statements to two acquaintances, indicating his involvement in murders with the defendant. The court recognized the statements were casual remarks that he spontaneously made to acquaintances. They were "street corner" statements that the co-defendant made to friends without any motive to shift blame to another or minimize his own involvement in the murders. The court found the statements were nontestimonial in nature.

In People v. Compan, 100 P.3d 533 (Colo. Ct. App. 2004), cert. granted (Oct. 25, 2004), the Colorado Court of Appeals concluded that statements of a non-testifying domestic violence victim to her friend immediately after the attack did not qualify as testimonial. Subsequently, the court decided People v. Garrison, No. 01CA0527, 2004 WL 2278287 (Colo. Ct. App. 2004). In Garrison, the court determined the murder victim's hearsay statements to his training manager that "an old friend" was threatening to kill him were not testimonial. Thus, admission of the statements did not violate the defendant's right of confrontation. The statements were not made to the police, and there was no indication that the training manager was acting as a police agent.

Horton v. Allen, 370 F.3d 75 (1st Cir. 2004), amplified that a statement, admitted under the state of mind hearsay exception, that on the day of the murders defendant's accomplice had told a witness that he needed money and that the victim had refused to give him drugs on credit, was nontestimonial. The First Circuit Court of Appeals emphasized the accomplice's statements were made during a private conversation with the witness. "In short, [the accomplice] did not make the statements under circumstances in which an objective person would 'reasonably believe that the statement would be available for use at a later trial.'" Id. at 84.

Parle v. Runnels, 387 F.3d 1030 (9th Cir. 2004), clarified that an unavailable declarant's diary entries were nontestimonial. The diary "was not created 'under circumstances which would lead an objective witness reasonably to believe that [it] would be available for use at a later trial.'" Id. at 1037.

United States v. Hendricks, 395 F.3d 173 (3d Cir. 2005), expounded that surreptitiously monitored private conversations and statements contained in Title III wiretap recordings are not "testimonial statements" for purposes of Crawford. The Third Circuit Court of Appeals noted: (1) the recorded conversations neither fell within nor were analogous to any of the specific examples of testimonial statements mentioned by the Crawford Court; (2) each of the examples referred to by the Crawford Court or the definitions it considered entails a formality to the statement absent from the recorded statements in Hendricks; (3) the Title III recordings cannot be deemed testimonial as the speakers certainly did not make the statements thinking that they would be available for use at a later trial; and (4) the very purpose of Title III intercepts is to capture conversations that the participants believe are not being heard by the authorities and will not be available for use in a prosecution.

The status of 911 calls has been addressed by the courts. In People v. Moscat, 777 N.Y.S.2d 875 (N.Y. Crim. Ct. 2004), the court determined that a 911 call is not testimonial because it is typically initiated by the witness looking for assistance rather than by the police summoning a witness to provide evidence. People v. Conyers, 777 N.Y.S.2d 274, 277 (N.Y. Sup. Ct.

2004), held that a caller's statements were nontestimonial because her "intention in placing the 911 calls was to stop the assault in progress and not to consider the legal ramifications of herself as a witness in a future proceeding." Cf. People v. Cortes, 781 N.Y.S.2d 401, 415 (N.Y. Sup. Ct. 2004) (reasoning that statements about an ongoing shooting made by a witness during a 911 call amounted to testimonial evidence because the information was elicited by 911 operator's use of an accepted pattern of questioning for the purpose of investigation, prosecution, and potential use at judicial proceedings; "an objective reasonable person knows that when he or she reports a crime the statement will be used in an investigation and at proceedings relating to a prosecution.").

The Court of Appeals of Washington, in State v. Powers, 99 P.3d 1262 (Wash. Ct. App. 2004), rejected a bright line rule that all 911 recordings are nontestimonial, opting instead to employ a case-by-case analysis into whether statements contained on a 911 recording originated from interrogation.

The Court of Appeals of Minnesota concluded statements made by the victims during their 911 call were not testimonial statements and, thus, were admissible in the assault trial despite the victims' unavailability at trial and the defendant's lack of prior opportunity to cross-examine the victims. State v. Wright, 686 N.W.2d 295 (Minn. Ct. App. 2004), review granted (Nov. 23, 2004). The statements in Wright were made moments after the assault while the victims were struggling for self-control and survival, no evidence suggested the call was handled by the 911 operator under formalized protocol, and the victims were providing information for immediate intervention and not for eventual prosecution. Wright inculcated:

> [T]hese statements do not fit within the definitions or the examples of testimonial statements. A 911 call is usually made because the caller wants protection from an immediate danger, not because the 911 caller expects the report to be used later at trial with the caller bearing witness—rather, there is a cloak of anonymity surrounding 911 calls that encourages citizens to make emergency calls and not fear repercussion.

Id. at 302.

A number of courts have found that statements made for the purpose of medical diagnosis or treatment are nontestimonial. In State v. Vaught, 682 N.W.2d 284 (Neb. 2004), a four-year-old victim of sexual abuse informed a physician during a medical examination about the identity of the defendant. The Supreme Court of Nebraska decided the statements by the child to the physician were nontestimonial. The court explicated:

> [T]he victim's identification of Vaught as the perpetrator was a statement made for the purpose of medical diagnosis or treatment. In the present case, the victim was taken to the hospital by her family to be examined and the only evidence regarding the purpose of the medical examination, including the information regarding the cause of the symptoms, was to obtain medical treatment. There was no indication of a purpose to develop testimony for trial, nor was there an indication of government involvement in the initiation or course of the examination.

Id. at 291. In State v. Scacchetti, 690 N.W.2d 393 (Minn. Ct. App. 2005), the Court of Appeals of Minnesota ruled a three-year-old victim's out-of-court statements to her examining physician that defendant's penis touched her vaginal and anal openings, together with videotaped statements during her conversation with the physician that defendant put his hands "right in there," referring to her anal opening, were not testimonial. Admission of the statements in a criminal sexual conduct trial did not violate the defendant's right of confrontation where they were made in response to questions by the physician for purposes of medical diagnosis and the physician was not working on behalf of law enforcement for the purpose of developing a case against the defendant.

In re T.T., 815 N.E.2d 789 (Ill. App. Ct. 2004), reasoned that a victim's statements to medical personnel regarding descriptions of the cause of symptoms, pain or sensations, or the inception or general character of the

cause or external source thereof are not testimonial in nature where such statements do not accuse or identify the perpetrator of the assault.

The Court of Appeals of Michigan concluded admission of the child victim's statement through the testimony of the executive director of the local Children's Assessment Center, a private organization, did not violate the defendant's right to confront his accuser in a trial for criminal sexual conduct. People v. Geno, 683 N.W.2d 687 (Mich. Ct. App. 2004). The statement did not constitute testimonial evidence, as it was not made to a government employee, and the child's answer to the question whether she had an "owie" was not a statement in the nature of ex parte in-court testimony or its functional equivalent. Id.

Courts have discussed the nontestimonial nature of various reports. The Court of Criminal Appeals of Alabama held an autopsy report showing the cause of death of a homicide victim was not testimonial. Perkins v. State, CR-02-1779, 2004 WL 923506 (Ala. Crim. App. 2004). The Supreme Court of New Mexico, in State v. Dedman, 102 P.3d 628 (N.M. 2004), declared a blood alcohol report showing the defendant's blood alcohol level at the time of the vehicle accident was nontestimonial for purposes of determining whether admission of the report, without testimony of the nurse who drew the blood sample, violated the defendant's Sixth Amendment right to confrontation in a prosecution for aggravated driving while under the influence of intoxicating drugs. The report was generated by State laboratory personnel, not law enforcement, and the report was not investigative or prosecutorial.

Co-conspirator statements have been found to be nontestimonial. See, e.g., United States v. Reyes, 362 F.3d 536 (8th Cir. 2004) (stating that Crawford does not apply to co-conspirator statements because they are nontestimonial). In United States v. Saget, 377 F.3d 223 (2d Cir. 2004), the Second Circuit Court of Appeals determined a co-conspirator's statements against the defendant to a confidential informant, whose true status was unknown to the co-conspirator, were not testimonial. Noting Crawford's specific caveat that it only pertains to testimonial statements, the court pointed out that the co-conspirator had no knowledge of the confidential

informant's connection to investigators and believed that he was having a casual conversation with a friend and potential co-conspirator. Id. In fact, all circuits that have considered this issue with respect to co-conspirators have reached a similar conclusion. See, e.g., Horton v. Allen, 370 F.3d 75 (1st Cir. 2004); United States v. Lee, 374 F.3d 637 (8th Cir. 2004); People v. Cook, 815 N.E.2d 879 (Ill. App. Ct. 2004); Thomas J. Reed, Crawford v. Washington and the Irretrievable Breakdown of a Union: Separating the Confrontation Clause from the Hearsay Rule, 56 S.C. L. Rev. 185 (2004); see also Williams v. SCI-Huntingdon, No. Civ.A. 02-CV-7693, 2004 WL 2203734, at *11 n.7 (E.D.Pa. Sept. 30, 2004) ("'an off-hand, overheard remark' to an acquaintance, such as . . . one made by [a] co-conspirator . . ., is outside the scope of Crawford and thus does not violate the Confrontation Clause.").

Some courts have examined what encompasses "interrogation" within the meaning of Crawford. In Fowler v. State, 809 N.E.2d 960 (Ind. Ct. App. 2004), transfer granted (Dec. 9, 2004), the Court of Appeals of Indiana ruled that when police arrive at the scene of an incident in response to a request for assistance and begin informally questioning those nearby immediately thereafter in order to determine what has happened, statements given in response thereto are not testimonial. The court observed that what constitutes a testimonial statement is the official and formal quality of such a statement. The court noted that Crawford chose not to say that **any** police questioning of a witness would make a statement in response thereto testimonial. Rather, Crawford expressly limited its holding to police "interrogation." The court stated: "Whatever else police 'interrogation' might be, we do not believe that word applies to preliminary investigatory questions asked at the scene of a crime shortly after it has occurred." Id. at 964.

In People v. Corella, 18 Cal. Rptr. 3d 770, 776 (Cal. Ct. App. 2004), the California Court of Appeal illuminated:

> Preliminary questions asked at the scene of a crime shortly after it has occurred do not rise to the level of an "interrogation." Such an unstructured interaction between officer and witness bears no resemblance to a formal or informal police inquiry that is

required for a police interrogation [that results in inadmissible testimonial hearsay].

The Supreme Judicial Court of Maine, in State v. Barnes, 854 A.2d 208 (Me. 2004), found to be nontestimonial statements that were made by the murder defendant's mother (the victim) to police officers at the station house where she went after an earlier assault by her son. The interaction did not involve structured police interrogation triggering the cross-examination requirement of the Confrontation Clause in admitting the officer's testimony regarding the mother's statements. The mother went to the police station on her own, her statements to the officers were made when she was still under the stress of the alleged assault by the defendant, and officers were not questioning her regarding known criminal activity.

In State v. Forrest, 596 S.E.2d 22 (N.C. Ct. App. 2004), the Court of Appeals of North Carolina concluded a crime victim's statements to an officer made shortly after she was rescued from a kidnapping and assault by the police were not testimonial. The statements were made immediately after the rescue and with no time for reflection or thought on the victim's part and were initiated spontaneously by the victim. The victim was not (1) providing a formal statement, deposition, or affidavit; (2) aware she was bearing witness; or (3) aware her utterances might impact further legal proceedings. Id. at 27; see also People v. Newland, 775 N.Y.S.2d 308, 309 (N.Y. App. Div. 2004) ("[A] brief, informal remark to an officer conducting a field investigation, not made in response to 'structured police questioning' should not be considered testimonial."); People v. Mackey, 785 N.Y.S.2d 870 (N.Y. Crim. Ct. 2004) (stating responses to police officers during a preliminary field investigation are not barred as testimonial statements under Crawford if the statements and the circumstances in which they were made lack the requisite formality to constitute a police interrogation).

Various jurisdictions have addressed the status of excited utterances as nontestimonial. In People v. King, No. 02CA0201, 2005 WL 170727, at *5 (Colo. Ct. App., Jan 27, 2005), the Colorado Court of Appeals elucidated:

> [C]lassification of a statement as an excited utterance, while not dispositive, supports a conclusion that a statement is nontestimonial. An excited utterance by definition is one made before the declarant has had an opportunity to reflect on the event. Therefore, it is consistent with the definition of an excited utterance to conclude that it is not a statement which a declarant would reasonably believe at the time it was made might later be used at trial.

In Hammon v. State, 809 N.E.2d 945 (Ind. Ct. App. 2004), transfer granted (Dec. 9, 2004), the victim made a number of excited utterances to police officers at the scene of the crime, in response to preliminary police questions. In concluding these excited utterances did not constitute testimonial statements, the Court of Appeals of Indiana declared:

> [T]he very concept of an "excited utterance" is such that it is difficult to perceive how such a statement could ever be "testimonial." The underlying rationale of the excited utterance exception is that such a declaration from one who has recently suffered an overpowering experience is likely to be truthful. . . . An unrehearsed statement made without time for reflection or deliberation, as required to be an excited utterance, is not "testimonial" in that such a statement, by definition, has not been made in contemplation of its use in a future trial.

Id. at 952-53 (citations omitted).

A number of courts dealing with excited utterances have taken the approach of analyzing the intent of the declarant and determining whether the recipient of the excited utterance questions the declarant. See Allie Phillips, A Flurry of Court Interpretations: Weathering the Storm after Crawford v. Washington, 38-Dec Prosecutor 37 (Nov/Dec 2004). For example, if a declarant provides an excited utterance that is simply a cry for help or for medical treatment, and if the witness would not reasonably expect the statement to be used in a prosecutorial manner at the time the utterance is made, then those utterances are being declared nontestimonial and are subject

to a traditional hearsay analysis. See, e.g., People v. Moscat, 777 N.Y.S.2d 875 (N.Y. Crim. Ct. 2004); State v. Forrest, 596 S.E.2d 22 (N.C. Ct. App. 2004); State v. Orndorff, 95 P.3d 406 (Wash. Ct. App. 2004). However, if a declarant provides an excited utterance that could reasonably be expected to be used at a later trial (such as reporting a crime), or if a statement is made in response to questioning by a 911 operator, those utterances are being declared testimonial and will require the witness to testify. Phillips, 38-Dec Prosecutor at 41.

C. Status of Lee's Statements under Crawford

The analysis of whether the admission of Lee's statements violated the Confrontation Clause begins with the question of whether the statements are testimonial, triggering Crawford's per se rule against their admission. In this case, Lee's statements were not: (1) ex parte in-court testimony or its functional equivalent; (2) extrajudicial statements contained in formalized testimonial materials, such as affidavits, depositions, prior testimony transcripts, or confessions; or (3) taken by police officers in the course of an interrogation. Rather, Lee's statements were made during a private conversation with his cousin and roommate, Britt. See Crawford, 541 U.S. at ___, 124 S.Ct. at 1364 ("An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not."). Significantly, the decedent did not make the statements "'under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" Id. Concomitantly, Lee's statements do not qualify as testimonial.

Lee's statements are nontestimonial. Consequently, their admission is outside of Crawford's scope. See Crawford, 541 U.S. at ___, 124 S.Ct. at 1364.

D. Applicability of Ohio v. Roberts

"Justice Scalia's opinion [in Crawford] hints, but does not decide, that the Confrontation Clause no longer applies to non-testimonial hearsay, and

that its admission is governed by a jurisdiction's hearsay rules" and Roberts' "indicia of reliability" approach. David F. Binder, Hearsay Handbook § 7:2 (4th ed. 2004). Most jurisdictions are leaning toward the idea that "Crawford [left] the Roberts approach untouched with respect to nontestimonial statements." United States v. Saget, 377 F.3d 223, 227 (2d Cir. 2004); see also Horton v. Allen, 370 F.3d 75, 84 (1st Cir. 2004) ("Thus, unless Christian's statements qualify as 'testimonial,' Crawford is inapplicable and Roberts continues to apply."); State v. Manuel, 685 N.W.2d 525, 533 (Wis. Ct. App. 2004), review granted, 689 N.W.2d 55 (Wis. 2004) ("[W]e proceed, in an abundance of caution, to analyze Manuel's confrontation clause claim under the Roberts analysis").

Because nontestimonial hearsay is at issue here, we apply the reliability test of Roberts to determine whether the admission of Lee's hearsay statements violated Dushun's Confrontation Clause rights.

Under Ohio v. Roberts, 448 U.S. 56 (1980), for the statement to be admissible, the declarant must be unavailable, and the statement must fall within a firmly rooted hearsay exception or bear particularized guarantees of trustworthiness. Obviously, Lee's death rendered him unavailable to testify. Therefore, we examine whether Lee's statements fall within a firmly rooted hearsay exception.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE; see also State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003) ("Evidence is not hearsay unless it is an out of court statement offered to prove the truth of the matter asserted."). The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies. See Huggler v. State, 360 S.C. 627, 602 S.E.2d 753 (2004); State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004); see also Rule 802, SCRE ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."); Rule 803, SCRE (setting out exceptions to the hearsay rule).

One exception to the hearsay rule is an excited utterance. Rule 803(2), SCRE. An excited utterance is a "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Id. A statement that is admissible because it falls within an exception in Rule 803, such as the excited utterance exception, may be used substantively, that is, to prove the truth of the matter asserted. State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002); State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999).

"The rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication." Sims, 348 S.C. at 20, 558 S.E.2d at 521; see also State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001) (stating the basis for the excited utterance exception to the hearsay rule is that the perceived event produces nervous excitement, making fabrication of the statements about the event unlikely). An excited utterance expresses the real belief of the speaker because the utterance is made under the immediate and uncontrolled domination of the senses, rather than under reason and reflection. McHoney, 344 S.C. at 94, 544 S.E.2d at 34. In deciding whether a statement falls within the excited utterance exception, a court must consider the totality of the circumstances. Id. Such a determination is left to the sound discretion of the trial court. Sims, 348 S.C. at 21, 558 S.E.2d at 521; State v. Burdette, 335 S.C. 34, 515 S.E.2d 525 (1999).

"Three elements must be met to find the statement [is] an excited utterance." Sims, 348 S.C. at 21, 558 S.E.2d at 521. First, the statement must relate to a startling event or condition. Id. Second, the statement must have been made while the declarant was under the stress of excitement. Id. Third, the stress of excitement must be caused by the startling event or condition. Id. (citing Rule 803(2), SCRE). Other factors useful in determining whether a statement qualifies as an excited utterance include the declarant's demeanor, the declarant's age, and the severity of the startling event. Id. at 22, 558 S.E.2d at 521.

The statements here clearly meet the first element because they relate to the startling event of Lee having a gun "pulled" on him. As for whether Lee

was "under the stress of excitement" when he made the statements, we note that the amount of time that passed between the startling event and the time the statement was made is one of several factors to consider when deciding whether a statement is an excited utterance. Id. at 21, 558 S.E.2d at 521. While the passage of time between the startling event and the statement is one factor to consider, it is not the dispositive factor. Id. Even statements after extended periods of time can be considered an excited utterance as long as they were made under continuing stress. Id. at 22, 558 S.E.2d at 521. Lee, normally a "calm, humble, laid back kind of person," was described by Britt as being "storm, angry, storm, angry, just temper-high kind of person when he came in the room" on the Sunday evening before the shooting. Britt testified that Lee "just kept walking back, walking back and forth in the room. Just like . . . banging on stuff." When asked what had happened, Lee replied: "They just pulled a . . . gun on me." (emphasis added). Lee's demeanor and the severity of the startling event are factors that weigh in favor of finding his statements to be excited utterances. Finally, the third element is satisfied. The "stress of excitement" was caused by the "startling event" of Lee having a gun "pulled" on him.

Moreover, the fact that the statements were made in regard to questioning by Britt does not preclude their admissibility. See United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980) (noting the single question, "what happened," has been held not to destroy the excitement necessary to qualify under excited utterance exception to hearsay rule); United States v. Glenn, 473 F.2d 191 (D.C. Cir. 1972) (stating fact that excited utterance is made in response to inquiry is not decisive on issue of admissibility).

Given the totality of the circumstances, we find Lee was under the continuing stress of excitement when he told Britt "they just pulled a . . . gun on me." When Britt asked who "pulled" the gun on him, Lee declared: "The niggers we had a[n] argument with on Saturday." On cross-examination by Lucius's attorney, Britt stated that Lee actually said, "The small kid pulled out a gun and asked . . . what's up now." Britt believed Lee was specifically referring to the "little brother," Dushun. The trial court did not abuse its discretion in admitting Lee's statements to Britt because the statements fall under the excited utterance hearsay exception.

We are not required to find any other guarantees of trustworthiness because the court will only look to this prong if a statement does not fall within a firmly rooted hearsay exception. See State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999). Lee's statements constitute excited utterances. The United States Supreme Court has held that an excited utterance is a firmly rooted exception to the hearsay rule. See White v. Illinois, 502 U.S. 346 (1992); see also State v. Burdette, 335 S.C. 34, 45, 515 S.E.2d 525, 531 (1999) ("excited utterance exception is firmly rooted in South Carolina law and satisfies the requirements of the Confrontation Clause").

The admission of Lee's statements satisfies Roberts. The trial court correctly admitted the hearsay statements. Dushun's Confrontation Clause rights were not violated.[4]

II. Statement Against Penal Interest by Unavailable Witness

Dushun maintains the trial court erred in excluding Michelle Buff's testimony that Maurice Sanders told her he shot the decedent. We disagree.

A. Relevance

For evidence to be admissible, it must be relevant. Rules 401 & 402, SCRE; State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE; State v. Pagan, 357 S.C. 132, 142, 591 S.E.2d 646, 651 (Ct. App.

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[4] Dushun further claims the trial court erred in admitting the hearsay statements because they actually relate to a prior bad act, not an excited utterance involving "the event." However, this objection was not made at trial, and the trial court did not have an opportunity to rule upon the objection. See State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004) (noting that, to be preserved for appellate review, issue must be raised and ruled upon in the trial court). Therefore, the issue is not preserved for appeal.

2004). Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In re Care and Treatment of Corley, 353 S.C. 202, 577 S.E.2d 451 (2003); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

Prior to the Statens' joint trial, the State stipulated that neither Lucius nor Dushun actually shot Lee. The State declared: "[W]e are proceeding on the theory of accomplice liability . . . . Whoever the shooter is is not relevant." Buff, the girlfriend of Limel Sims, would testify that she took Maurice Sanders to the Benedict College area to look for the gun. In her statement to police, she revealed that, when she took him to the bus station, Sanders confessed to shooting a man at Benedict College because "the guy he shot and some of his friends had jumped him at the mall." She added that Sims confirmed Sanders shot Lee. The trial court ruled the test for trustworthiness of the statement was not met, and the identity of the shooter was unimportant for the State to prove its case for aiding and abetting murder.

Buff's testimony was not relevant. The trial judge did not abuse his discretion in excluding the evidence.

B. Analysis under Rule 804(b)(3), SCRE

Nontestimonial statements against the interest of the declarant at the time when made are admissible as an exception to the hearsay rule if the declarant is unavailable and the circumstances show that a reasonable person would not have made the statement unless believing it to be true. See Crawford v. Washington, 541 U.S. 36 (2004). Rule 804(b)(3), SCRE, provides in pertinent part:

> The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
>
> . . . .

> (3) **Statement against interest.** A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. . . . .

The declaration against penal interest exception has been applied to the determination of whether a third party committed the crime charged instead of the defendant in a criminal case. See State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992). An abuse of discretion standard is applied to a trial judge's ruling on the issue of whether a statement is admissible as a declaration against penal interest. State v. Forney, 321 S.C. 353, 468 S.E.2d 641 (1996).

However, "[a] statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." Rule 804(b)(3), SCRE; see also McClain v. Anderson Free Press, 232 S.C. 448, 468, 102 S.E.2d 750, 760 (1958) (Oxner, J., concurring). A defendant seeking to offer a hearsay statement against interest bears the formidable burden of establishing that corroborating circumstances clearly indicate the trustworthiness of the statement. State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001). Exculpatory evidence that is not corroborated with other evidence that clearly shows its trustworthiness is excluded. Forney, 321 S.C. at 359-60, 468 S.E.2d at 645; State v. McKnight, 321 S.C. 230, 467 S.E.2d 919 (1996). Whether a statement has been sufficiently corroborated is a question left to the discretion of the trial judge after considering the totality of the circumstances under which a declaration against penal interest was made. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000); State v. Kinloch, 338 S.C. 385, 526 S.E.2d 705 (2000).

Rule 804(b)(3) does not require that the information within the statement be clearly corroborated, it means only that there be corroborating circumstances which clearly indicate the trustworthiness of the statement

itself, i.e., that the statement was actually made. Kinloch, 338 S.C. at 389, 526 S.E.2d at 707. The corroboration requirement "goes not to the truth of the statement's contents, but rather to the making of the statement." McDonald, 343 S.C. at 323, 540 S.E.2d at 466. The corroboration requirement is a preliminary determination as to the statement's admissibility, not an ultimate determination about the statement's truth. Kinloch, 338 S.C. at 389, 526 SE.2d at 707.

In State v. McKnight, evidence offered by a witness with a motive to testify against the alleged declarant was held not sufficiently trustworthy:

> First, the declarant in this case, Willie, was available to testify. . . . Moreover, Willie did not exercise any fifth amendment privilege against self-incrimination.
>
> Second, no corroborating evidence existed which clearly indicated the trustworthiness of Willie's statement against penal interest. On the contrary, the evidence presented during the in camera hearing severely undermined that statement's trustworthiness. Belser admitted that he felt Willie had wrongly put the blame on him for crimes actually committed by Willie. This statement suggested that Belser had a possible motive for attributing Chandler's murder to Willie. Belser also stated that when Willie confessed to the murder, he felt Willie was only joking. Indeed, Willie himself admitted telling at least three different versions of his story at one time or another.

Id. at 234-35, 467 S.E.2d at 922.

Sanders was unavailable to testify due to the exercise of his Fifth Amendment rights. Buff would testify that Sanders confessed to the murder, thereby exposing him to possible further criminal charges. The only corroboration was from the eyewitness testimony of Brandon McCants, who testified that he saw Sanders shoot Lee, and Dushun's statement that he and Lucius withdrew. However, McCants did not come forward with his information until two months after the incident, even though he was

questioned by police much earlier; Dushun obviously had motive to lie; and, when arrested shortly after the shooting, Sanders tested negative for gunshot residue. Lastly, but most importantly, Sims, Buff's boyfriend, was charged with the murder as well, and Buff's statement would exculpate him. Therefore, she had motive to make up the story about Sanders' confession.

Based on the totality of the circumstances, and because of the lack of corroboration and Buff's possible motivation to be untruthful, the trial court correctly excluded her testimony. Dushun did not carry his burden of showing circumstances clearly corroborating the making of the statement. See United States v. Salvador, 820 F.2d 558 (2d Cir. 1987) (stating inference of trustworthiness from proffered corroborating circumstances must be strong, not merely allowable, not an insignificant hurdle). Moreover, the circumstances do not indicate that the statement was not fabricated. See United States v. Bagley, 537 F.2d 162 (5th Cir. 1976) (excluding statement on basis of doubt as to whether it was made). We affirm the trial court's reasoning that, because the State conceded neither Staten brother was the shooter, showing Sanders as opposed to Sims was the shooter did nothing to aid the jury in its decision. The trial court did not abuse its discretion in refusing to admit the testimony.

III. Jury Charge

Dushun contends the trial court erred in refusing to charge mere association and mere suspicion. We disagree.

The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001); State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). The judge is required to charge only the current and correct law of South Carolina. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000). In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. State v. Adkins, 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003). A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Id. at 318, 577 S.E.2d at 464. To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v.

Reese, 359 S.C. 260, 597 S.E.2d 169 (Ct. App. 2004). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

Dushun requested a charge on mere presence and mere association before the charge was given, and then objected to the charge when he believed the trial court insufficiently presented the law on mere association to the jury. Our supreme court, in State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998), held a charge to be sufficient though the trial court failed to charge mere presence and mere association. The court ruled that "the trial court's charge was not misleading. . . . The trial judge extensively instructed the jury on the requisite criminal intent for each of the charged crimes." Id. at 77, 502 S.E.2d at 76-77.

In the instant case, the trial court's charge included the following law: "To be liable as an accomplice, the defendants must have knowledge of the principal's criminal conduct. Now, mere presence at the scene of the crime is not sufficient to establish – to establish guilt as an accomplice." The charge included a detailed instruction on aiding, abetting, or assisting the commission of the crime "through some overt act." We find the trial court's jury charge sufficiently covered the law on mere presence and knowledge. The trial court's charge on the whole, combined with the law on reasonable doubt and mere presence and knowledge, was proper. Therefore, the trial court's refusal to recharge the jury with Dushun's suggested additions was neither erroneous nor prejudicial to Dushun, as required by Burkhart. See Burkhart, 350 S.C. at 263, 565 S.E.2d at 304.

Dushun never requested a charge on mere suspicion before the trial court actually administered the charge. Furthermore, he did not request such an instruction after the trial court had charged the jury with the law. The trial court did not have an opportunity to rule upon the objection. See State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct. App. 1999) (to preserve objection to jury charge, defendant must raise the issue at trial). In addition, Rule 20(b) of the South Carolina Rules of Criminal Procedure provides:

> Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection.

Therefore, the issue is not preserved for appeal. Furthermore, although Lucius objected to the trial court's alleged failure to include a charge on mere suspicion, an appellant may not preserve an issue for appeal by way of a co-defendant's objection. See State v. Carriker, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) ("While appellant's co-defendant did object, the appellant may not utilize the objection of another defendant to gain review.").

CONCLUSION

For the reasons stated herein, Dushun's convictions are

AFFIRMED.

BEATTY and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Dushun Staten Petitioner.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS

Appeal from Richland County
L. Henry McKellar, Circuit Court Judge

Opinion No. 26336
Heard April 17, 2007 – Filed June 11, 2007

VACATED IN PART AND DISMISSED

Deputy Chief Attorney for Capital Appeals Robert M. Dudek, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, for petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, and Solicitor Warren B. Giese, all of Columbia, for respondent.

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PER CURIAM: We granted a writ of certiorari to review the Court of Appeals' decision in State v. Staten, 364 S.C. 7, 610 S.E.2d 823 (Ct. App. 2005). We vacate that portion of the opinion discussing Crawford v. Washington, 541 U.S. 36 (2004), as unnecessary to the disposition of this case and dismiss the writ of certiorari.

VACATED IN PART AND DISMISSED.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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June 27, 2007

REMITTITUR

The Honorable Barbara A. Scott
Clerk of Court, Richland County
1701 Main St
PO Box 2766
Columbia, SC 29202-2766

Re: The State v. Staten, Dushun
2002-CP-40-00786 and 01148

Dear Ms. Scott:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court and the Court of Appeals is attached.

Very truly yours,

D.E.S.

CLERK

ATTORNEY GENERAL'S OFFICE
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Enclosures

cc: Deputy Chief Attorney for Capital Appeals Robert M. Dudek
Assistant Attorney General S. Creighton Waters
The Honorable Warren Blair Giese

2007CP400-4259

STATE OF SOUTH CAROLINA)
)
County of Richland)
Dishun Staten #282328)
Full name and prison number, if any, of applicant.)
)
v.)
)
The State of South Carolina)
Name of Respondent)
)

In the Court of Common Pleas

APPLICATION FOR

POST-CONVICTION RELIEF

07 JUL 12 AM 11:29
BARBARA A. SCOTT
C.C.C. & G.S.
RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Corr. Inst. CB-60 PO Box 205 Ridgeville, SC 29472

2. Name and location of Court which imposed sentence General sessions; Richland County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2002-GS-40-1148
   (b) 2002-GS-40-786
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) 3/4/02 Sentence terms - 30 yrs.
   (b) _____
   (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. Sauth Carolina Court of Appeals

ii. S.C. Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied appeal

ii. Denied Writ of certiorari

iii. _____

(c) the date of each such result:

i. 8/26/05

ii. 6/11/07

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Look on back

ii. Look on back

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) ineffective assistance of counsel

(b) Violation of U.S. Const. Amend. 6TH

(c) Violation of U.S. Const. Amend. 14TH

7.

(d)

i. Per Curiam: After a careful consideration of the petition for rehearing, this court is unable to discover any material fact or principle of law that has been overlooked or disregarded, and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the petition for rehearing be denied.

ii. Per curiam: We granted a writ of certiorari to review the Court of Appeals' decision in State v. Staten, 364 S.C. 7, 610 S.E.2d 823 (Ct. App. 2005). We vacate that portion of the opinion discussing Crawford v. Washington, 541 U.S. 36 (2004), as unnecessary to the disposition of this case and dismiss the writ of certiorari.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel failed to protect my 6th and 14th Amend. rights, to due process

(b) Denied a fair trial and the right to present witness

(c) Deprived of the laws of due process

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

Yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Appeal

ii. Writ of certiorari

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. S.C. Court of Appeals

ii. S.C. Supreme Court

iii.

iv.

(c) the disposition thereof:

i. Denied

ii. Denied

iii.

iv.

(d) the date of each such disposition:

i. 8/26/05

ii. 6/11/07

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. refer to page 2 (look on back)

ii. refer to page 2 (look on back)

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of counsel / was not an appealable issue

(b) [redacted] other issues were related to ineffective assistance of counsel

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. David Taylor

ii. Robert Dudek 1330 Lady street, suite 401 Cola, S.C. 29201

iii.

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Appeal, Writ of Certiorari

iii.

18. State clearly the relief you seek in filing this application.

To have conviction of sentence reverse

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF Richland)

I, DuShun Staten # 282328, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X DuShun Staten

Sworn to and subscribed before me
This 10 day of July, 2017.

Angela L Wall L.S.
Notary Public for South Carolina
My Commission Expires 4/4/2017

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, DuShun Staten # 282328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

DuShun Staten
Applicant

Sworn to and subscribed before me
This 10 day of July, 2017

Angela L Wall L.S.
Notary Public for South Carolina
My Commission Expires: 4/4/2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2007-CP-40-4259
	)	
Dushon Staten, 282328,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed July 12, 2007 , would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by David E. Taylor, Esquire. On March 4, 2002 , after a jury trial with the Honorable L. Henry McKellar , the Applicant was convicted and sentenced to the following:

TERM:	INDICTMENT #:	CONVICTED OF:	SENTENCE RECEIVED
1-02	2002-GS-40-1148	Murder	30
1-02	2002-GS-40-0786	Lynching 1st	10

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Staten, Op. No. 3955 (S.C. Ct. App. filed March 7, 2005)[1].

[1] On Certiorari the South Carolina Supreme Court held: "We vacate that portion of the opinion discussing Crawford v. Washington, 541 U.S. 36 (2004), as unnecessary to the disposition of this case and dismiss the writ of certiorari." Opinion No. 26336, June 11, 2007.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. INEFFECTIVE ASSISTANCE OF COUNSEL
    a. COUNSEL FAILED TO PROTECT MY 6TH AND 14TH AMEND. RIGHTS, TO DUE PROCESS
2. VIOLATION OF U.S. CONST. AMEND. 6TH
    a. DENIED A FAIR TRIAL AND THE RIGHT TO PRESENT WITNESS
3. VIOLATION OF U.S. CONST. AMEND. 14TH
    a. DEPRIVED OF THE LAWS OF DUE PROCESS

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. §

17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 14, 2008

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

2007-CP-40-4259

Dushon Staten, 282328

Applicant,

vs) AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite D
Columbia, SC 29204

DATED this 15th day of February, 2008.

Jean R. Indriago, Legal Assistant
For Respondent

DOCKET NO. 02-68-40-1148

WITNESSES

(S) Paul Mead, CPD

ARREST WARRANT NO. G609715

ACTION OF GRAND JURY

TRUE BILL

Willie M. Ussery-Bowers

Foreman of Grand Jury

VERDICT

GUILTY

William H. Lee 3/1/02

Foreman of Petit Jury *Date:*

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#49 JANUARY **TERM** 2002

THE STATE

vs.

DUSHON "MALIK ALI" STATEN

Indictment for Murder

S. C. Code Section 16-3-10 Felony
0116

ATTEST
A TRUE COPY
Barbara C. Scott
C. C. 1431

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on January 23, 2002,

the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — MURDER

That DUSHON [redacted] STATEN

did in Richland County on or about January 15, 2001 aid and abet the principle party who did feloniously, wilfully and with malice aforethought, kill one Phillip Lee, Jr.

by means of gunshot wound to the head

and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B Giese
SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Dushon ~~"Malik Ali"~~ "Staten")
AKA:)
Race: B Sex: M Age: 24)
DOB: 3/4/78 SS#:)
Address:)
DL# SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
02 -GS- 40 - 0786
A/W#: DP 02024
Date of Offense: 1-15-01
S.C. Code §: 16-3-210 16-3-230
CDR Code #: 0/3/1/2
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Lynching 1st
in violation of § 16-3-210 of the S.C. Code of Laws, bearing CDR Code # 0/3/1/2

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

M. A.
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 10 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 405 days/~~months~~ jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

ATTEST
A TRUE COPY

Barbara A. Staton
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE L. Henry McKellar
Judge Code: 191413
~~Sentence~~ Date: 3/4/02

Court Reporter: C. Lefebvre C. C. P1433 S.

ARREST WARRANT

G-609715

~~G609715~~ ~~211551~~

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

COLUMBIA

THE STATE

against

DUSHON STATEN

Address: 216 LINALCREST DR APT 1203

COLUMBIA SC 29209

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 10 Weight: 165

DL State: _____ DL#: _____

DOB: 03/04/1979 Agency ORI#: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: MEAD P. ABASSEN

Offense: MURDER

Offense Code: 1401

Code/Ordinance Sec. 16-3-10

1434

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☒ Municipality of COLUMBIA. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant _____ on 01/23/01.

_____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of) **AFFIDAVIT**
COLUMBIA)

Form Approved by
S C Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant MEAD P. ABASSEN who being duly sworn deposes and says that defendant DUSHON STATEN did within this county and state on 01/15/2001 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AT APPROX. ON 01-15-01 (VICTIM) PHILLIP LEE JR., AGE 24 BECAME ENGAGED IN A VERBAL ALTERCATION WITH SEVERAL SUSPECTS IN THE PARKING LOT OF HASKELL DORM, 2414 HASKELL AV. ON THE CAMPUS OF BENEDICT COLLEGE IN THE CITY LIMITS OF COLA, S.C. (VICTIM) ATTEMPTED TO WALK AWAY FROM THE SUSPECTS, ONE OF THE SUSPECTS PRODUCED A HANDGUN AN FIRED AT LEAST ONE SHOT STRIKING VICTIM THE HEAD. WITNESSES REPORT THAT THE SUSPECTS ENTERED [illegible] GREEN MITSUBISHI GALANT LEAVING [illegible]

Sworn to and subscribed before me on 01/23/2001

_____

Signature of Issuing Judge

_____

Signature of Affiant

Affiant's Address #1 JUSTICE SQUARE

COLUMBIA SC 29201

Affiant's Telephone _____

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of) **ARREST WARRANT** FEB 02 2001
COLUMBIA)

CLERK OF COURT
CRIMINAL RECORDS

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01/15/2001 defendant DUSHON STATEN did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

_____ (L.S.)

Signature of Issuing Judge

Judge Code: 402203

Judge's Address CITY OF COLUMBIA, SC

MUNICIPAL COURT, 1703 BAY ST. COLA.

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

(2) Paul Mead, CPD

ARREST WARRANT NO.

DP02024

ACTION OF GRAND JURY

TRUE BILL

Willie D. Lossery-Bowers
Foreman of Grand Jury

VERDICT

GUILTY

Foreman of Petit Jury 3/1/02 *Date:*

DOCKET NO. 2002-GS-40-786

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#49 JANUARY **TERM** 2002

THE STATE

vs.

DUSHON "MALIK ALI" STATEN

Indictment for

LYNCHING 1ST

S. C. Code Section 16-3-210 Felony
0312
S. C. Code Section 16-3-230

ATTEST
A TRUE COPY
Barbara A. Peeler
C. C. P. & G. S.

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR

LYNCHING 1ST

At a Court of General Sessions, convened on January 23, 2002,

the Grand Jurors of RICHLAND County present upon their oath:

That DUSHON [redacted] STATEN did in Richland County on or about the 15th day of January, 2001, band together with one or more persons thus constituting a mob for the purpose and intent of inflicting violence upon the body of Phillip Lee, Jr. and one member of the mob did so by inflicting a gunshot wound to the head of Phillip Lee, Jr. causing his death.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B Giese
SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Dushon ~~Malik Ali~~ "Ali" Staten)
AKA:)
Race: B Sex: M Age: 24)
DOB: 3/4/78 SS#:)
Address:)
)
DL#_____ SID#:_____)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
02 -GS- 40 . 0786
A/W#: DP 02024
Date of Offense: 1-15-01
S.C. Code §: 16-3-210 16-3-230
CDR Code #: 013112
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Lynching 1st
in violation of § 16-3-210 of the S.C. Code of Laws, bearing CDR Code # 013112
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ Defendant _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 405 days/~~months~~ jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:_____
☐ set by SCDPPPS_____
_____
Recipient:_____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

ATTEST: A TRUE COPY

Barbara A. [illegible]
Clerk of Court/ Deputy Clerk

Court Reporter: C. LeFebvre C. C. P. & G. S.

PTUP _____
_____days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
_____

PRESIDING JUDGE L. Henry McKellar
~~Sentence~~ Code: 1/91/413
~~Sentence~~ Date: 3/4/02

White - Clerk *Green* - Corrections _____ - Probation *Pink* - Defendant

```
CMTI330D                SCDC OFFENDER MANAGEMENT SYSTEM                 07/31/0
OMCOMITA                      RELEASE DATE SCREEN                       C041957
SCDC# > ?282328                                          LOC: LIEBER
STATEN, DUSHON -                          SCDC CLASSIFICATION..: VIOLENT
                                              SEXUAL REGISTRY..: N
                                              SEXUAL PREDATOR..: NOT APP
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE     DNA STATUS.....: COMPLETED
                                              GPS REQUIREMENT..: N
CURRENT SENTENCE: 030-00-000          CONSECUTIVE SENTENCE ..: N
                                      CURRENT SENT START DATE: 01/23/2001
PROJECTED COMPLETION DATES
  MAXOUT DATE .....: 01/16/2031       CURRENT EWC .: 3 F 5
  YOA SIX YEAR DATE:   /  /           CURRENT EEC .: B4
INITIAL PAROLE DATE: 00/00/0000       NEXT PAROLE HEARING DATE: 00/00/0000


TOTAL GT DAYS EARNED .......: 000000     LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000559     LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000134      CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS .: 000
TOTAL SERVICE TIME EARNED ..: 002348


PFKEYS:       5:HISTORY OF DATE CHANGES
```

CLASSIFICATION SUMMARY REPORT DATED 07/31/07 C041957

SDC# 282328 STATEN,DUSHON - FBI# 252877AB1

FFENDER TYPE.: ADULT-STRAIGHT SENTENCE

NSTITUTION ..: LIEBER CORRECTIONAL INST. DORM.....: CB0060A

ECURITY/CUST.: 3 MINIMUM IN TOBACCO USER....: N

JRR INCARC SENT...: 30 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 01/16/2031

ENTRAL MONITORING.: YES STG-SUSPECT PROJ PAROLE DATE: 00/00/0000

ED CLASS: 1 NO MED PROB/NO WORK RESTRICT EWC JOB..: WARDKEEPER ASSISTANT

ENTAL CLASS: NMH (NO MENTAL HEALTH TRE EDUC PGM.: KEYBOARDING

JRRENT PROGRAM..: NO CURRENT PROGRAM EWC LEVEL: 3F5 EEC LEVEL: B4

GE...: 29 ASSIGNMENT..: BUILDING #2

REVIOUS NUMBERS:

* NO PREVIOUS NUMBERS **

JRRENT OFFENSES	SENTENCE YRS	MOS	DYS	COUNTY	SENTENCE START	V/NV	CAT	INDICT
YNCHING 1ST DEGREE	10	0	0	RICHLAND	01/23/2001	N	4	02GS400786
JRDER	30	0	0	RICHLAND	01/23/2001	V	5	02GS401148

RIOR COMMITMENTS OVER 90 DAYS:

08/09/95 *POSS-IMITATION CNTRLD SUB 3 YRS 0 MOS 0 DYS

ETAINERS (HOLD,WANTED,NOTIFY):

PAROLE VIOLATION WANTED GRANT CATEG: 1

SCAPES:

NO ESCAPE HISTORY

RIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

SSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

ON-ASSAULTIVE DISCIPLINARIES:

07/15/05	INCITING/CREATING A DIST	CONVICTED	MAJOR
11/05/04	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
02/18/04	REFUSING OR FAILING OBEY	DROPPED	MAJOR
10/27/03	REFUSING OR FAILING OBEY	CONVICTED	MINOR
04/05/03	REFUSING OR FAILING OBEY	CONVICTED	MINOR
03/30/03	REFUSING OR FAILING OBEY		OTHER
02/15/03	OUT OF PLACE	CONVICTED	MINOR
02/09/03	OUT OF PLACE		OTHER
12/09/02	REFUSING TO WORK		OTHER
11/17/02	REFUSING TO WORK		OTHER
09/23/02	OUT OF PLACE		OTHER
07/05/02	POSSESSION OF CONTRABAND	CONVICTED	MAJOR

ISTORY OF MOVEMENTS:

04/04/07	LIEBER	INCARCERATED	ADMINISTRATIVE
04/04/07	RICHLAND CO	ABSENT WITH LEAVE (A	MEDICAL
06/23/06	LIEBER	INCARCERATED	RETURN FROM COURT
06/02/06	RICHLAND CO	ABSENT WITH LEAVE (A	TO COURT
10/05/05	LIEBER	INCARCERATED	ADMINISTRATIVE
11/03/04	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/09/02	EVANS	INCARCERATED	ADMINISTRATIVE
04/02/02	KERSHAW	INCARCERATED	ADMINISTRATIVE
03/05/02	KIRKLAND	INCARCERATED	NEW ADMISSION

ISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JB ESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
ARDKEEPER ASSISTANT	12/12/06	00/00/00		3F5
ARDKEEPER ASSISTANT	06/02/05	07/15/05	PLACED IN ST/SP CUSTODY	3F5
ARDKEEPER ASSISTANT	11/04/04	11/05/04	PLACED IN ST/SP CUSTODY	3F5
JSTODIAL WORKER	01/10/03	11/03/04	INSTIT TRANSFER	3F5
OOD SERVICE AIDE	09/10/02	01/09/03	INMATE REQUEST	3F5
OOD SERVICE AIDE	04/04/02	09/09/02	INSTIT TRANSFER	3F5

:DC# 282328 STATEN,DUSHON - (CONTINUED)

:STORY OF EARNED EDUCATION CREDITS:

:C	START	END	TERMINATION
:SCRIPTION	DATE	DATE	REASON
)NUS 4-7 HRS/WK	02/01/07	00/00/00	

********* END OF REPORT *********

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Dushon ~~Malik~~ "Hi" Staton)
AKA:)
Race: B Sex: M Age: 24)
DOB: 3/4/78 SS#:)
Address:)
DL#: SID#:)

IN THE C[illegible]RT OF GENERAL SESSIONS
IN[illegible]CTMENT/CASE#:
02 GS- 40 - 1148
A/W#: G609715
Date of Offense: 1-15-01
S.C. Code §: 16-3-10
CDR Code #: 01/11/16
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murder
in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 01/11/16
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 405 days/~~months~~ jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine:	$
§14-1-206 (Assessments 100%)	$
§14-1-211(A)(1) (Surcharge)	$
§14-1-211(A)(2) (Surcharge)	$
§56-5-2995 (DUI Assessment)	$
3% to County (if paid in installments)	$
TOTAL	$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling [illegible] (ECSD)
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

Barbara A. Scott
Clerk of Court/ Deputy Clerk
Court Reporter: C. LeClerc

PRESIDING JUDGE L. Henry McKellar
Judge Code: 19413
Sentence Date: 3/4/02

White - Clerk Green - Corrections Ca1441 robation Pink - Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS)
Dushon ~~Mark~~ A. Staten)
AKA:)
Race: B Sex: M Age: 24)
DOB: 3/4/78 SS#: - -)
Address:)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
02 GS 40 0786
A/W#: DP 02024
Date of Offense: 1-15-01
S.C. Code §: 16-3-210 16-3-230
CDR Code #: 013112
☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Lynching 1st
in violation of § 16-3-210 of the S.C. Code of Laws, bearing CDR Code # 013112

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 405 days/~~months~~ jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: $ _____
§14-1-206 (Assessments 100%): $ _____
§14-1-211(A)(1) (Surcharge): $ _____
§14-1-211(A)(2) (Surcharge): $ _____
§56-5-2995 (DUI Assessment): $ _____
3% to County (if paid in installments): $ _____
TOTAL: $ _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
3500

PRESIDING JUDGE L Henry McKellar
Judge Code: 19413
Sentence Date: 3/4/02

Clerk of Court/ Deputy Clerk
Court Reporter: C. LeFebvre

White - Clerk Green - Corrections 1442 - Probation Pink - Defendant

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
DUSHUN STATEN, #282328,	)	**CASE NO.: 07-CP-40-4259**
Applicant,	)	
	)	
v.	)	**AMENDED APPLICATION FOR**
STATE OF SOUTH CAROLINA,	)	**POST-CONVICTION RELIEF**
Respondent.	)	

FILED
RICHLAND COUNTY
2009 MAR 30 PM 3:23
JEANETTE W. McBRIDE
C.C.P. & G.S.

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving to amend his Application for Post-Conviction Relief. In general, the Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. The Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Defense counsel was ineffective for failing to proffer the testimony of potential witnesses who heard Maurice Sanders confess to killing the victim;

2. Appellate counsel was ineffective for failing to argue that defense counsel sufficiently proffered the testimony of those witnesses;

3. Defense counsel was ineffective for failing to object to the solicitor's closing argument where the solicitor referred to facts not in the record;

4. Defense counsel was ineffective for failing to properly advise the Applicant about testifying at trial.

The Applicant asks that the above-referenced allegations be considered in addition to those allegations previously raised in his original Application for Post-Conviction Relief.

Respectfully submitted,

Tara Dawn Shurling
Attorney and Counselor at Law
Law Office of Tara Dawn Shurling
3614 Landmark Dr., Suite D
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com
Attorney for the Applicant

This 30th day of March, 2009.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
DUSHUN STATEN, #282328,	)	**CASE NO.: 07-CP-40-4259**
Applicant,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
	)	

RICHLAND COUNTY
FILED
2009 MAR 30 PM 3:23
JEANETTE W. McBRIDE
C.C.P. & G.S.

The undersigned hereby certifies that a true copy of the Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 30th day of March, 2009, by hand-delivery to:

Brian T. Petrano, Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Richland County Clerk of Court for filing.

Jeremy A. Thompson
Associate Attorney

SWORN TO BEFORE ME this 30th day of March, 2009.

Sharon H. McCollister (L.S.)
Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND) 2007-CP-40-04259

Dushun (Dushon) Staten,	)	
	)	
Plaintiff/Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
The State of South Carolina,	)	
	)	
Defendant.	)	

April 1, 2009
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:
TARA D. SHURLING, ESQUIRE
Attorney for Plaintiff/Applicant

BRIAN T. PETRANO, ASSISTANT ATTORNEY GENERAL
Attorney for the State

Crystal Holmes
Official Court Reporter

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVD.

(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE HEARING.)

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DAVID E. TAYLOR				
BY MS. SHURLING	6		60	
BY MR. PETRANO		56		
DUSHUN STATEN				
BY MS. SHURLING	65			
JOHN P. WOOD				
BY MS. SHURLING	75		79/81	
BY MR. PETRANO		77		80
WILLIE A. GILMORE				
BY MS. SHURLING	83			
BY MR. PETRANO		84		
CERTIFICATE OF REPORTER		97		

Wednesday, April 1, 2009:

THE COURT: Yes, sir.

MR. PETRANO: Thank you, Your Honor, may it please the Court.

This is 2007-CP-40-04259, Mr. Dushun Staten. This was a PCR application filed July 12th, 2007. It was a jury trial before Judge McKellar on March 4th, 2002. The Applicant was -- was indicted by the January 2002 term of the Richland County Grand Jury, that's 2002-GS-40-1148, for murder, the victim name of Phillip Lee, Jr., and for lynching in the first degree, same victim, 2002-GS-40-0786. 30 years concurrent for the murder and 10 years for the lynching, ultimate aggregate sentence of 30 years.

Of course, there was a direct appeal. The South Carolina Supreme Court ultimately affirmed the Applicant's convictions, Opinion Number 26336. That remittitur was -- oh, excuse me, the Opinion came out June 6th, 2007 which would have made this application untimely. However, I just wanted to point out that it is timely. The remittitur date is June 27th, 2007. And excuse me, I just misspoke there. It's completely timely. The remittitur date is correct.

And on that, I will turn it over to Ms. Tara Shurling, the Applicant's current counsel of record.

Thank you, Your Honor.

THE COURT: Yes, sir.

MS. SHURLING: Thank you, Your Honor. At the outset, I would note that the Applicant generally alleges that he received ineffective assistance of counsel in violation of his right to reasonable professional assistance prior to and during his jury trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution.

He has specifically alleged a number of matters, Your Honor, including some specific allegations raised in an amended application filed on March 30th, 2009. I would inquire as to whether those allegations have been included in Your Honor's package?

MR. PETRANO: I do not believe they are.

MS. SHURLING: I have an extra clocked copy of that amendment, Your Honor, to pass up at this time.

(Copy of amendment handed up to the Court.)

MS. SHURLING: Thank you.

Your Honor, I believe that the Applicant will start out by calling trial counsel, Mr. Taylor, to the stand.

THE COURT: Come around. Mr. David E. Taylor?

THE WITNESS: That's correct, Your Honor.

THE COURT: Is that Edward ---

THE WITNESS: That's Emanuel.

THE COURT: Okay.

THE WITNESS: That's why I just use it.

THE COURT: I understand why you use the E then. Let him put his stuff down first.

THE BAILIFF: Yeah, sure.

THE COURT: The other hand, Mr. Taylor.

THE WITNESS: I'm used to being over there.

(DAVID E. TAYLOR, having first been duly sworn, testified as follows:)

THE COURT: Please tell us your full name and spell your last name for the record.

THE WITNESS: David Emanuel Taylor, T-a-y-l-o-r.

DIRECT EXAMINATION

BY MS. SHURLING:

Q Thank you, Mr. Taylor. Would you please tell us, at the time of this trial back in March 2002, how long had you been practicing law?

A 32 years.

Q And what percentage of your practice ---

A Oh 2002, 28 years.

Q And what percentage of your practice was criminal

law related?
A Probably 60 percent or so, that would be close.
Q And for how long had your practice been weighted that heavily toward the practice of criminal law?
A Oh, goodness, I guess probably from the outset, probably.
Q And prior to going into private practice, did you work as a Public Defender or Solicitor or anything in the area of criminal law?
A Yes, I was a private investigator working for law firms.
Q Okay. But straight out of law school you went into private practice?
A Yes.
Q Okay. Were you retained or court appointed in this matter?
A I was court appointed.
Q And this case was tried as a joint trial, Dushun Staten and his brother Lucius Staten, is that correct?
A That's correct.
Q And Lucius was represented by Doug Strickler, is that correct?
A That is correct, yes.
Q Now, was Mr. Strickler the Chief Public Defender

back then, I don't recall?
A He was the Deputy Public Defender, I believe, Chief Deputy Public Defender.
Q Okay. Were there any plea negotiations in this case?
A Yes, there were, very limited but there were.
Q And does your file reflect what, if any, offers were made to Mr. Staten prior to this case going to trial?
A Yes, he was offered to plead guilty to the lynching charge with the State recommending a range of five to 15 years, which offer he rejected.
Q Were there any other offers?
A No, ma'am. He indicated very clearly that he did not want to plead to anything at that time.
Q Okay.

THE COURT: Let me understand something. That was five -- five -- what was ---

THE WITNESS: Five to 15, Your Honor.

THE COURT: That was for all the charges.

THE WITNESS: All the charges.

THE COURT: Okay. I'm sorry, Ms. Shurling, go ahead.

MS. SHURLING: Thank you.

Q So the offer was to plead to all charges, not just

the lynching?
A Well, he would plead to lynching and for that there would be a recommendation for five to 15. The murder charge would be dismissed.
Q Thank you. Now, did you ever consider filing a motion to require the State to elect between murder and lynching?
A No, I did not.
Q Did you consider at the time of trial asking for a jury instruction which would inform the jury that they could find the Defendant guilty of one but not both?
A I don't know if I did or not. Do you have the transcript?
Q The record doesn't reflect any such discussion. Do you have any ---
A I don't -- I don't recall that. That's been seven areas ago. I don't believe that either Mr. Strickler or I asked for that.
Q Okay. Now, the charge of lynching was based on a claim of homicide by mob violence, correct?
A Correct.
Q And the murder of course was predicated on the same theory?
A Yes.

Q So did you consider making any kind of motion based on the concept of simultaneous jeopardy?
A No.
Q Okay. Moving on, early on in this proceeding you requested permission to introduce testimony relative to third party guilt, is that correct?
A Yes.
Q And the record will indicate that you informed the Court ---

MS. SHURLING: Your Honor, I'm referring to page 235 of the record.

Q --- that there were three individuals named Steve Odom, Willie Gilmore and John Patrick Wood that were present at the Courthouse and prepared to testify that someone named Maurice Sanders had in fact confessed to being the shooter, do you recall that?
A I recall those gentlemen, yes. Whether they were all at the Courthouse or not, I'm not really sure. They may have been.
Q Well, if the record reflects that you advised the Court that they were, you wouldn't have made that statement if it were not true, would you?
A That's right.
Q Okay. And if you made the statement to the Court

that they would testify that Mr. Sanders had confessed to them, you must have had some foundation as an officer of the court for making that assertion, correct?

A Well, yes, I had been told that they had said that and so I subpoenaed them. But unfortunately when they got here, they did not agree that they had ever heard that. So when put to the test of getting ready to testify about what they claim they heard, these gentlemen said they didn't hear it, they didn't know anything about it.

Q Well, Mr. Taylor, if you look at the record, do you dispute the fact that the Court was informed that you had these three witnesses prepared to testify ---

MR. PETRANO: Your Honor, if I may -- and I don't mean to interrupt, I just want to put this on the record. The State does object on the grounds of relevance as far as the third party guilt and whether Mr. Sanders may or may not have confessed to other people. The Supreme Court has ruled in this case on appeal that that was irrelevant.

Thank you, Your Honor.

THE COURT: All right.

MS. SHURLING: And I will be happy to explain

where the appellate lawyer messed up on that some more in a moment, Your Honor.

THE WITNESS: What page are we on?

MS. SHURLING: Your Honor, the colloquy concerning this ---

THE COURT: This is nonjury. Objection is noted.

MR. PETRANO: Thank you, Your Honor.

Q Mr. Taylor, the discussion concerning these individuals begins on page 230 ---

THE COURT: And for the record, I say that because even if I didn't think it was relevant, you have a right to proffer it, so I'm going to hear it anyway. That's generally my ruling in nonjury matters. But you need to object for the record, of course.

MS. SHURLING: Thank you, Your Honor.

THE COURT: All right.

Q Mr. Taylor, if you look at page 230, you say at line 16 through 20, we expect to have three others who've heard him say that, Your Honor.

A That is correct. And at that time, that's really what I expected I was going to hear, yeah.

Q So at this point, you had not spoken with these gentlemen?

A Oh, I had spoken with one of them and I had a

private detective speak with two of them. And the one that I spoke with later told the private detective that he'd never even spoken with me. He didn't know who I was, he didn't know who this Maurice Sanders was, he didn't -- he didn't know anything about it, according to him.

The other two just simply said they did not hear Maurice Sanders say any such thing and they weren't getting involved, that it was not true.

So we had to make a decision at that point in the trial, Mr. Strickler and I together, do we want to call these people in here with everything that we have going on here and muddy this record worse than it already is. It was very very involved at that point, the third party's guilt for argument essentially rotated around one Michelle Buff who claims that she took Maurice Sanders to the bus station so that he could flee the jurisdiction because he had shot and killed a man.

She further said that she had taken him to the Benedict College area where this murder occurred and helped him look for the gun because he said he, while running away, had thrown the gun. He wanted to find the gun.

So it was -- that's where we started from.

Q Okay. Well, let me interrupt you and skip ahead a little bit.
A All right.
Q You ultimately attempted to introduce her testimony and her testimony was not allowed, correct?
A It was not allowed in front of the jury. It -- it was proffered but it was not allowed. The Court ---
Q And in fact ---
A --- excluded it.
Q Pardon me, I thought you were through.
A That's all right.
Q You and the State entered into a stipulation proffer as to what her testimony would have been if it had been allowed, correct?
A That's partly correct. But if you -- if you look at the entire dialog between myself and the Court and Mr. Strickler and the Court, you will see that we fully informed Judge McKellar of everything that she would testify to and more actually. And I don't recall whose idea it was -- I called her to testify. I wanted to put her on the stand. But I believe it may have been Judge McKellar's idea to just put the statement in instead in order to save time. Now, the statement covered what we wanted her to say so we said, well, it goes in the record so that

preserves the record and that's our proffer.
Q Okay. Now, you're aware that that issue, the admissibility of her testimony, was one of the issues raised on direct appeal, correct?
A Yes, I saw that, yes.
Q And ultimately that the Court of Appeals found that her testimony would not be relevant under an appropriate theory of third party guilt, correct?
A Yes.
Q Now, the evidence adduced at trial was that my client and his brother Lucius were at the scene with another individual, and I'm going to say this phonetically, Shakeem (phonetic) Wilson.
A Correct.
Q Okay. Mr. Wilson was not a witness at trial, was he?
A No, he was in jail and he invoked his Fifth Amendment rights not to testify.
Q Was there any testimony tying either Lucius or the Applicant to Maurice Sanders?
A Any testimony, yes.
Q In what respect, sir?
A I'm trying to think now. It's been a while and a lot -- a lot of what I think about is, you know, things that my client told me. But I don't think

there was ever any question or dispute that they knew each other. The real issue was, did they have anything to do with the shooting or was it this guy Limel Sims and Maurice Sanders who did it on their own or were they aided and abetted by Lucius and Dushun, okay. But there never was a question in anybody's mind about the fact that they all knew each other.

Q Okay. So they -- you believe the record establishes that your client and his brother knew Maurice Sanders?

A Oh, yes.

Q But beyond that, what evidence, if any, did the State introduce that would have tended to support the concept that Maurice Sanders was acting in concert with the Applicant and his brother and the gentleman who refused to testify?

A The State didn't try to introduce evidence that they were acting in concert with Maurice Sanders. And that's what gave me the biggest difficulty of all. I'm still disturbed by it to this day.

Q Okay.

A The State took the position that it did not matter who the shooter was which I just -- I know the Supreme Court has ruled on that but I still find

that difficult. I find it incredibly difficult to buy because they're theory was that these two men aided and abetted somebody and how could you say who that somebody was if you don't identify them.

So the identity of the shooter, according to the Court's ruling and the State's case, was totally irrelevant. I still don't know how you can possibly do that without establishing the relationship between the shooter and the guy who handed him the gun which is what happened in this case.

Somebody -- under the State's theory -- okay, there were two theories. Under the State's theory, somebody handed the shooter the gun. The State's theory was that that person was Dushun handing the gun to a shooter, okay. Now, we -- we -- we took strong exception to the ruling and gracious, it's argued in the record for pages and pages and pages ---

Q Mr. Taylor, I hate to interrupt you but I'm going to try and narrow our focus a little bit.

A Okay.

Q All right. Preparing for this trial, did you do basic research on the concept of third party guilt and circumstances under which evidence of third party guilt is admissible?

A Yes, I did.
Q And can you tell us, if you will, based on that research, what the standard for when you do and when you don't get to introduce evidence of third party guilt is?
A Well, third party guilt is admissible if it has indicia of trustworthiness. If you have corroboration that the statement was actually made, such as in this case we argued the confession. Basically, I mean, that -- that's it because you're making a -- you're making a statement against your penal interest, that's another requirement, or some other critical interest. In this case it was the criminal and penal interest.
Q Okay, I'm going to interrupt you because I'm not necessarily talking about confessions. I'm talking about the standard for the introduction of any evidence which you assert tends to establish third party guilt. What is it that you need to show in order to get that evidence in?
A You have to show first of all that it has some indicia of trustworthiness. You have to show that there is some corroboration, which actually to my mind really sort of aims at trustworthiness because if it's not corroborated under 804(b)(3), then it

doesn't come in as a -- as a -- an exception to the hearsay rule is what we're really talking about.

It's flat out 804(b)(3) exception to the hearsay rule, it's spelled out there and then you have the cases of State versus Doctor, State versus McDonald, State versus Kinloch, a host of cases. The proposition has driven me kind of nuts for years because if you -- when you say you've got to have corroboration, the question always seemed to be, well, what do you want for corroboration. And all of a sudden the Court's taken on the job as a finder of fact because it starts to issue opinions on credibility.

Q Okay. Let's -- so those are the elements as you understand them?

A Right.

Q Well what about the fact that the Court has said that the evidence must raise a reasonable inference as to the accused's innocence and further, that the evidence offered by the Defendant as to the commission of the crime by another person is limited to facts which are inconsistent with the Defendant's guilt.

Would you agree with me that those are elements of the standard for introduction of third party

guilt?
A Yes.
Q And my question is, you articulated the fact that the State's theory was accomplice liability, is that correct?
A That's correct.
Q And accomplice liability requires that acts usually -- that all the acting parties be held reciprocally accountable for the reasonable and foreseeable consequences of acts usually agreed upon by the parties.

Do you agree with that basic definition?
A With some -- the word agreement may be not quite right because it could happen other than by agreement, but basically that's correct.
Q Well, do you disagree that the case law on accomplice liability requires that the crime you're being charged with under the theory of accomplice liability be a reasonable foreseeable consequence of the acts mutually agreed upon by the parties?
A Or acted upon by the parties which, of course, may or may not exemplify an agreement.
Q That's your understanding of the law?
A Yes.
Q All right. Now, can you show me in this record

where you made any attempt to demonstrate for the Court that the reason the testimony of these three gentlemen was relevant, and later the testimony of the woman whose testimony you tried to get in, was relevant was because there was no evidence adduced by the State which tended to show that the Applicant, his brother Lucius or the third gentleman who refused to testify were acting in combination with Maurice Sanders?

A Now, your question is, did I try the point out to the Court that there was an element missing?

Q Did you argue the appropriate standard for why you should be allowed to introduce third party guilt evidence?

A Yeah, yes.

Q And point out for me, sir, where you argued to the Court that there was no evidence that your client had acted in concert with Maurice Sanders.

A Well, throughout the case we said that they were not involved with Maurice Sanders that night through the developing of the testimony of Brandon McCants and Lucius Staten himself. They disassociated themselves from the shooter. They in fact, according to the testimony that we put on, were not even close to the shooter. And there was dispute

about that, the State's witnesses of course said that they were and ours said that they weren't.

So you got two -- you got two different versions of the facts there.

Q Well the shooter was identified as a gentleman named Sims, was he not, last name Sims?

A Yes, identified -- well, if -- if -- if you believe the State's theory.

MR. PETRANO: I am going to object to leading.

Q Who was identified by the State's witnesses as the physical shooter?

A The State actually took the position that it was irrelevant who the shooter was but put on evidence that it was Sims.

Q Well, I believe that was my question.

A Right, okay.

Q Who did the State introduce evidence was the physical shooter?

A Sims.

Q Okay. And if there was independent evidence that Maurice Sanders had confessed to being the shooter, what evidence did the State introduce that would support the theory that there was still accomplice liability because the Applicant and his brother and this third gentleman were acting in concert, not

only with Sims, but also with Maurice Sanders.

A You're asking me what evidence did the State put on?

Q What evidence was there period other than the fact that they knew each other and they were all in this big parking lot at Benedict?

A I took the position that there was none.

Q And ---

A That -- that on this particular occasion our defense was that these two gentlemen had nothing whatsoever to do with this murder. The State's position was that Dushun handed the gun to Sims and Sims then shot Phillip Lee. That's what the State's evidence was. And ours was quite the contrary, two entirely different stories in this case. From time to time I thought I was in Alice in Wonderland or something, it was crazy in my opinion, the State's position, to be very honest with you.

And I don't mean that as an insult to my beloved State or these gentlemen from the Attorney General's office but I just tell it like it is. I thought -- I thought that theory of the case was totally ludicrous.

Q Well, and not to beat a dead horse, but my point is, if you really wanted to get in evidence that allegedly supported third party guilt, why didn't

you argue that the testimony of these three gentlemen would be relevant because it supported the inference that someone unrelated to your client or his co-defendants under the State's own theory of the case, had committed the shooting?

A You're talking about these three -- there actually were five people that perhaps could have, we thought. Two of them were co-defendants, in jail, one of them, the other one on the loose. The one in jail invoked his Fifth Amendment. The others told us that they didn't know anything about this case, once they got here to the Courthouse. Now we thought they were going to testify that they did, that they heard Maurice Sanders say he shot and killed this man on the Benedict College campus that night.

Q When did you interview them and them tell you that?

A I talked to the guy Odom by telephone and I can't tell you the exact date but it was sometime far in advance of the trial. And then I sent a private investigator out and talked to the others. And then I talked to two of them here at the Courthouse, maybe all three of them at the Courthouse, and they just clearly indicated that they knew no such thing.

Now, I don't know whether they were lying when

they first said that they heard it or whether they were lying to me at that moment, but I knew one thing, I wasn't going to be doing Dushun very much good bringing that in when we were already trying to deal with this third party liability issue in Michelle Buff who was the critical witness.

Q Well, without corroboration, you had very little chance of getting her testimony in, isn't that true?

A I thought there was a tremendous amount of corroboration in her statement. Maurice Sanders and Limel Sims knew Dushun Staten and Lucius. The man took her to the location to look for the weapon that he said he used to commit the murder. He then fled the jurisdiction of the Court and the law presumes that their innocence be drawn from that if you're a criminal defendant.

All of those things we thought corroborated what was in the statement that Michelle Buff was prepared to testify to.

Q Okay. Let's back up to the standard for the admissibility of third party guilt evidence again. You thought it was critical that you get in Michelle Buff's testimony?

A Yes.

Q Where in the record did you argue that her testimony

was relevant because it established that the actual shooter was someone that there was no evidence had acted in concert with your client?

A It's throughout the record. It's almost everywhere in the record.

Q Well, if you could just show me one, I'd be real happy.

(Pause.)

Q And not to interrupt your train of thought but while you're looking, to clarify, the Court of Appeals found that her testimony was not relevant ---

MR. PETRANO: I object. Despite the disclaimer, she is objecting, allow him a minute to look, it's up to 1600 pages here.

MS. SHURLING: I'll wait.

THE COURT: Thank you.

(Pause.)

A Okay. Number one, let's put in the fact that Dushun Staten's written statement to the police was admitted into evidence and in that statement he implicated Maurice Sanders.

Brandon McCants, we had to extradite him back from New Jersey to testify and he testified that the shooter was Maurice Sanders. We presented all of this to -- to Judge McKellar ---

Q If I can clarify, that was not my question. My question is, where did you argue to Judge McKellar that there was a total failure of proof with regard to any connection between your client and Maurice Sanders' actions?

A That was our entire case, the entire record is all about that. You want me to find some specific point where I said, Judge McKellar, hold on, I want you to listen to me, and I said, specifically, this is what I want you to hear? That's not the way you do it. You present it through the evidence of the witnesses who come up. It's throughout this transcript.

Q Okay, I'm going to try to be a little more articulate. Will you agree with me that the State's theory was that it didn't matter who fired the shot as between Shakeem Wilson, Lucius or Dushun because whichever one of them fired the shot, they were in on this together and under a theory of accomplice liability they would be mutually responsible for each other's actions?

Do you agree with that?

A Yeah.

Q And your approach for the defense was to try to show, through whatever avenue you were allowed to use, that no, Sims wasn't the shooter, Maurice

Sanders was?

A That's right.

Q And the conclusion reached by the Court of Appeals was that it was irrelevant if someone or anyone said that Maurice Sanders was the shooter because there was going to be joint liability among the parties, no matter who the shooter was, correct?

A Unfortunately, yes.

Q And my question is, where in the record, either with reference to the three gentlemen that you tried to introduce testimony from the beginning, or in connection with Michelle Buff, where did you argue that, Your Honor, there is no evidence that my client came to the scene with Maurice Sanders, that he was there for any mutually agreed upon activity with Maurice Sanders, the State has totally failed to show that my client and his brother and these people were doing anything with Maurice Sanders, and unless they can show that, they don't have accomplice liability?

Where did you argue that?

A This is -- hold on one second, this is not making reference to my transcript but to the record on appeal so those pages are not going to help me. But surely you read the dialog between me and Judge

McKellar. I'll find where it starts.
Q Are you referencing the three witnesses in the beginning or Michelle ---
A I'm -- I am -- we're talking now about third party liability, Michelle Buff, her statement, whether it comes in, doesn't come in.
Q Well, let's see ---
A And I argued to the Court that -- I argued to the Court that the -- the relationship between the shooter and the Defendants was absolutely critical to the case. So, I mean, I said it over and over and over again. The Court didn't buy it but that's what I said.
Q Okay. Well we'll let the record speak for itself. Let me move on to the question of at least initially when you brought up these three witnesses and you were arguing the point with Judge McKellar, why didn't you proffer their testimony during that in camera hearing?
A I didn't proffer their testimony during the in camera hearing because they were going to testify they didn't know anything.
Q Well, you said at that point you didn't know they were going to say they didn't know anything.
A When I talked to them in this Courthouse, two of

them at least in this Courthouse down in the holding cell, and they -- are you -- they said, no we're not going to testify to that ---

Q Okay. My question ---

A --- so ---

Q Earlier, I pointed out that in the record you told the Judge that there was these three people that to your knowledge were going to testify that they had heard Maurice Sanders confess?

A That's correct. And that was a correct statement when I made it.

Q And my question is, that was the in camera hearing, that statement was made by you during the in camera hearing ---

THE COURT: Let me stop both of you. The way I understand things to be unfolding is, prior to the hearing, you told Judge -- well, prior to the trial, you had the impression these witnesses were going to testify a certain way. You told Judge McKellar that. Sometime during the course of the hearing, you go downstairs and talk to them. They say, we ain't going to say anything. And at the time you make an argument before Judge McKellar, there was no reason to proffer anything because they were there, present and available to testify. And at that time you thought they would testify the way you

had been told they would.

Am I understanding that so far?

THE WITNESS: Absolutely, yes, that's absolutely what happened.

THE COURT: All right. Well, I understand things so far, the sequence of events. He told Judge McKellar one thing that he believed. He talked to the witnesses later own who changed their story. And at the time you were making an argument before Judge McKellar, there was no reason in camera to proffer what they would testify to because you thought they would testify the way you had been told they would later on.

THE WITNESS: Right.

THE COURT: All right.

Q So the record should reflect that there was some sort of recess during this in camera hearing?

A No. It wasn't until sometime later that I talked to them. You see, the State goes first, as you know, then we go. When I get a break, I've got to go down and check on these witnesses, get all the witnesses lined up. At some point in there is when they said, we're not going to say that. We've never said it and we're not going to say it now. Did I feel like shooting them, yeah, but I can't.

Q But, Mr. Taylor, I am obviously not being as

articulate as I would like. I'm going to try to say this better one more time. During the in camera hearing on the question of whether or not you were going to be allowed to introduce these gentlemen's testimony, you stated as an officer of the court that you had reason to believe they were going to testify that Maurice Sanders had confessed to them?

A That is correct.

Q And at that time you believed that to be the truth?

A Yes.

Q My question is, once the Judge said, no, I am not going the let it in, during that hearing, why didn't you ask to proffer their testimony on the record?

A Because that's not the way it happened. He did not say at that time, I'm not going to let it in. He didn't say that. He said at that time, he said, gentlemen, let's don't go into that in opening argument until I have had time to review the case law which both sides are going to present me with, and we did, and I make a ruling.

Q Okay.

A Now, after that I found out these guys weren't going to say this. I mean, these witnesses were no longer the witnesses we thought they were going to be.

Q And that was based on your discussing it with them

downstairs?

A With at least two of them and maybe all three of them.

Q Okay. Did you advise the Applicant not to testify?

A No.

Q Well, there's a place in the record where you say that he was going to testify if Michelle Buff had been allowed to testify. But since she wasn't testifying, he wasn't going to.

Do you recall saying that?

A Yes.

Q Can you explain for us what that rationale was about?

A Well, I can only tell you what he said. I can only tell you what -- what he had decided to do. I went out to the jail the night before he was to testify and we talked because we thought he was going to be probably the first witness the next morning. And I wanted to talk to him, had already talked to him about his right to testify. And he -- he had some concerns about the fact that the testimony regarding where they went after these events occurred were -- his version was not now the same as that had been presented by his brother and another witness and he was very -- he was very concerned about that. And

he was concerned about the fact, he was upset by the fact that the Court would not let Michelle Buff testify and he had a right to be upset about that, I submit to you. I was.

But -- and I just said, well, you know, you -- you have a right to testify but your brother Lucius, I thought, did probably as good a job as a witness could do under the circumstances of the case as it unfolded. And, you know, I don't know if your getting on the stand is going to be helpful or harmful to you. Honestly, it could go both ways. I said, but you have a right to testify and tell your story but I just can't elicit from you a false statement. So if what you're saying is that you want to change your testimony about what happened after the events, where you went and what have you, you know, I really can't have anything to do with that. But we can find a way for you to testify and so why don't you just think about it overnight.

So he did. And the next morning Judge McKellar told me that he wanted to see me in the holding tank. I went into the holding tank and he told me that he wanted me to pray with him, which I did. And he said that if I really thought his brother Lucius did a good job of testifying, that -- and

they weren't going to let Michelle Buff -- he asked that again, if they weren't going to let Michelle Buff testify, he -- he was not going to testify, basically was the bottom line. Those are not his exact words but, I mean, that's what he said.

So I said, okay. On the -- that was on the first of March. On the 22nd of February, I had had a similar conversation with him -- similar in respect, I mean, you have the right to testify, because he -- he was questioning whether he wanted to testify at that time. He had some outstanding warrants from New York. He was in violation of his probation. He had some drug charges that could have been mentioned to impeach his credibility, going back some period of time.

So on the 22nd of February, when I told him of the State's offer, which we have discussed, he rejected it and he signed a document that I just wrote out in hand, saying that he had been offered this plea and he had rejected it, and my lawyer has also told me that I have a right to testify or not to testify and this is my decision alone, because he asked me that again.

So then when he decided here that he was not going to testify, I had him sign another piece of

paper that I, Dushun Staten, have decided not to testify, freely and voluntarily, no threats have been made against me and no coercion applied to me.

Q Let me back up for a moment. You said a lot that I need to comment on.

A All right.

Q With regard to his concern about what he had told you about where he and his brother had gone immediately after the shots rang out, he was concerned that he didn't have any corroborating evidence of that at one point, is that true?

MR. PETRANO: Objection, leading.

THE COURT: All right.

A I don't know that I can answer that question a hundred percent but I would think that that's probably a part of what he was trying to get across without a doubt.

Q And ---

A That he didn't have -- let me tell you what -- and I don't remember all the differences but I do remember that in one version, this guy named Phillip Kinard supposedly came over and got him from Sharice Blevins (phonetic) and carried him to a motel. Under another statement that he gave me, he left with Talia (phonetic) from Sharice Blevins house and

Talia took him back home. His brother had testified that they got a hotel room for some reason and that Dushun stayed in the hotel room and the rest of them went back home.

And, you know, all of this was starting to, you know, be of a little concern because the State was putting a great deal of emphasis on these fleeing vehicles and where they went, the description on the car, that the car had license plates on it that were brand new and that the car had just been purchased and that car was found ditched and all of those things.

So what happened after this had become a big interest of the State's and they focused on it very heavily. And I -- you know, I'm sorry, I didn't make him not testify but I would not have made him testify either. That's not my job, it's not my prerogative, that's his. I explained it to him. He said he understood it and I believed he did understand and he chose not to testify.

Q You done?

A Yes, ma'am.

Q I didn't want to talk over you, I'm sorry.

A Okay.

Q You ultimately were able to produce testimony from a

minister who testified to giving Lucius and Dushun a ride from near Benedict over to I believe it was Irmo?

A Yes.

Q And the other testimony you were relating to was how they got from Irmo to where they ended up after that?

A Right.

Q Okay. Now, you also mentioned your client's former drug charges. Was there a discussion with the Solicitor's office about whether or not they were going to even try to introduce that evidence, that prior record?

A Yes, initially. And also a discussion about the fact that he also had used an alias and they -- they indicated that -- and Judge McKellar was present during this conversation giving us some guidance. And he said, you know, that the use of an alias he thought probably they shouldn't do but the other part, yeah, it could come in if he testified and I told Lucius that -- I mean, Dushun that. Dushun -- Dushun knows that I told him that.

Q Did you have discussions with the Solicitor's office about such testimony possibly opening the door to testimony concerning the deceased's own drug dealing

background?

A No, not in that vein, no.

Q Well, in what vein did you have those discussions?

A Well, we didn't have those discussions. We just talked some about the fact that the State thought that what really was going on here was a gang war between the Bloods and the Crips and that they were fighting over the turf of Benedict College to see who was going to have the right to sell marijuana there. And indeed there were some little blue baggies and things like that found around the area where the deceased fell and died.

They really didn't get into that too much because Judge McKellar kind of persuaded them that they might be getting a little out of the area, off target so to speak. Because, as I put it to Judge McKellar at that point, if you let them say in opening argument that my client's a member of a gang, I'm going to have to move for a mistrial. So then he says, well, you've got to prove these things. You can't just make these -- these broad assertions.

That was the extent of really the conversation about drugs. That was the extent of it.

Q Did at any time Judge McKellar indicate that if they

introduced evidence concerning your client's drug history that he was going to allow you to get into testimony concerning the deceased's drug history?

A Not that I recall.

Q And you did not convey that sentiment to your client?

A I don't believe I did.

Q Okay.

A I don't recall anything about that.

Q Let's talk about the testimony of Andrew Britt who was the deceased's cousin. Do you recall that testimony?

A Vaguely, yes. He was -- I think he was the first witness called, wasn't he?

Q And -- in camera and then later during the trial in the presence of the jury. His testimony in relevant part is around page 384. I want to get from where his testimony starts.

A Is that ---

Q I'm sorry, his testimony begins on page 362, line seven of the complete file transcript. I don't know what volume that would be.

A Give me that number again, three?

Q 362, line seven.

(Pause.)

THE COURT: Volume two.

MS. SHURLING: Thank you.

A Okay.

Q Okay. You objected to Andrew Britt being able to testify to what he had allegedly been told by Lee prior to his death?

A Yes.

Q And you objected to that on hearsay grounds?

A That's correct.

Q Did you consider objecting to that evidence also on the ground that it violated the character evidence rule as evidence of prior bad acts?

A No.

Q Are you aware that it was argued on that basis as an alternative theory for its inadmissibility on direct appeal?

A I am aware that Mr. Dudek combined that argument with my argument that it was a violation of the hearsay rule to let it in. To be very honest with you, I did not perceive that to be the grounds for objection that should have been raised to that. I raised the objection that I thought was particular and to the point, and that was it was a violation of the hearsay rule. Prior bad acts, as I understand them, generally you would object to those if those

prior bad acts have no real relationship to the events about what you're trying your case.

But if they are related to the events trying your case such as to show motive or a willingness to do something or a state of mind or something like which is what we had here, prior bad acts just didn't even -- didn't even strike me as the argument It simply was that this is hearsay. This man said, that he pulled a gun on me.

Q Well, let me interrupt you there. Pulling a gun on someone and pointing it and presenting a firearm would be a separate and independent crime, would it not?

A It would, yes.

Q And the Court of Appeals in Footnote 4 of the decision found that that issue was not reserved for appellate review?

A The issue of prior bad acts?

Q Correct.

A Well, I didn't make the argument so certainly I didn't preserve it. Mr. Dudek tried to raise it on appeal. He even tried to weave it into my hearsay argument somehow and ---

Q Okay.

A --- and then they said that that part of the

argument wasn't preserved and they're right. It was never raised at the trial level.

Q Are you familiar with a line of cases dealing with the confrontation laws and hearsay starting with State v. Pollard and Dennison and more recently with the Edward German v. State decision?

A You're talking about the right to confront and cross-examine the witnesses against you and the Crawford case, basically, of the United States Supreme Court decided, what, four or five years ago? I'm generally familiar with those.

Q I'm talking about the German case in which the Court abrogated its prior rulings in Pollard and Dennison where cases were overturned based on a hearsay objection. And in German v. State, the Court said, the real nut was that it was hearsay evidence of prior bad acts and implicated prior bad acts. Are you familiar with that?

A Those facts are not these facts. Those facts are not these. Now, you've got to understand. Here the State is accusing Dushun of murder by shooting or handing the gun to a shooter who shot him. And they say that two days before or three days before that, he pulled a gun on Mr. Lee at that time, okay?

Now, I don't think that the prior bad act

exclusion is not going to keep that out of evidence. If he says that happened, it's hearsay and that might keep it out of evidence. But just the raw bad acts argument I don't think will. The State's going to say, all this does is prove that he is willing to do such a thing, a state of mind.

No, I didn't make the argument and I wouldn't make it, I don't think, today either.

Q Even if I told you that in German the hearsay prior bad acts evidence in question was a statement concerning the fact that Edward German was known to sell drugs on that street corner which was the precise crime he was on trial for?

A Well, that doesn't change my mind.

Q Okay. Well, let's move on to something else. Andrew Britt testified to what his cousin had said concerning a fairly recent altercation alleged with the Applicant, correct?

A Yes.

Q And he ultimately admitted that what Andrew Britt said was, the small kid pulled out a gun and asked, what's up now, correct?

A That sounds familiar.

Q Now, Britt extrapolated and stated that he believed Lee was specifically was referring to quote, little

brother Dushun?
A That's right.
Q Why didn't you raise a separate objection to Andrew Britt's interpretation of what the dead man meant by, the small kid pulled out a gun and asked, what's up now?
A Because Britt -- Britt already knew that all of these people had come to know each other. Britt knew that Dushun was the little brother of Lucius Staten. Everybody knew that they had that knowledge.
Q But, sir, your job was to try to keep this testimony out, correct?
A That particular statement, yes.
Q And my question is, why didn't you object to Andrew Brit being allowed to translate what he, in his own words, believed Lee meant by the small kid?
A I just -- I didn't see that was a real serious issue at that point. I mean everybody was referring to him as the little kid, the little guy, or the little brother, and that's throughout the trial of the case.
Q Can I get you to take a look at page 1238 of the record which is somewhere in the heart of John Gasser's closing argument?

A All right, let's see, that's going to be volume four?
Q I would assume, yes, sir.
A 12...
Q 38.
A All right.
Q And starting about line eight he says (reading): So was Shakeem Wilson, their cousin, they were hanging back. That's why they're not charged with murder but accessory after the fact based on the evidence that you all didn't hear about because it's not relevant to this case. Certain things are done after the fact that you didn't hear about because it's not relevant.

Why didn't you object to that closing argument?

Q Let me -- let me read this just a moment, okay?

(Pause.)

A I suppose the reason I didn't object to it is because there was testimony that the cousin Shakeem Wilson was hanging back and that was -- I think you'll find that in Brandon McCants' testimony. I think you'll find that in Lucius Staten's testimony and someone else's testimony who indicated that he drove the green Gallant automobile away that night. One other person indicated that he may have been in

the white Daewoo (phonetic) automobile or I think they finally decided it was a Ford Escort or whatever it was.

And so, I mean, they -- and there was testimony about that in the case. I don't know why Johnny Gasser here says, y'all didn't hear about that but I think they did hear about that.

Q Well, the cousin, Shakeem Wilson, had invoked the Fifth and refused to testify, correct?

A That's correct.

Q And Mr. Gasser comes along and says, at lines 12 through 14, certain things are done after the fact that you didn't hear about because it's not relevant?

A That is not -- that's a very ambiguous statement, certain things are done after the fact that you didn't hear about because it's not relevant. I mean that -- that doesn't say anything.

Q Well, he also says, that's why they're not charged with murder but accessory after the fact based on evidence that you all didn't hear about because it's not relevant to this case.

A I don't know why he said, you all didn't hear about it, because I am almost positive they did. He says, they're charged with lynching, the same thing, that

they were a part of the group, shots were fired. Several people testified that Shakeem Wilson was there with them that night.

Q Well, do you agree that this line of argument suggests that the Solicitor took a certain course of action not charging the cousin based on matters not in evidence, not before the jury?

A I -- I don't -- I don't see that that's -- he's on closing argument. I'm sorry I don't see the prejudice to my client in that statement with ---

Q Well ---

A --- with everything that has been testified to earlier. And, you know, one thing you don't want to do sometime is you don't want to stand up and object to what another lawyer is saying in the middle of his closing argument simply to have you eat your words and watch him stuff it right down you. And I thought that really that testimony had come out. I didn't see that as objectionable.

Q Well, that's not all he says? I mean ---

A Well ---

Q --- if I may. He says that they were hanging back. I agree that it says that, but it al -- it says, so was Shakeem Wilson, their cousin, they were hanging back. That's why they're not charged with murder

but accessory after the fact based on evidence, quote, that you all didn't hear about because it's not relevant to this case. Certain things are done after the fact that you didn't hear about because it's not relevant.

Now, Shakeem Wilson was your client's cousin, correct?

A Yes.

Q He was with your client on the night in question?

A Yes.

Q The fact that he did not testify on behalf of your client was a potentially negative inference. Do you agree, would give rise to a potentially negative inference?

A That the mere fact that he did not testify?

Q If your own cousin was there and doesn't testify to say that you were not guilty, the jury could draw an inference from absence as a witness, couldn't they?

A Well ---

MR. PETRANO: I'm going to object ---

THE COURT: Sustained.

MR. PETRANO: Thank you.

THE COURT: Sustained. This is proceeding an argument with the witness. Just ask the question and accept his answer and move on.

Q You did not ---

THE COURT: Stop, I need to take a break.

MS. SHURLING: Thank you.

THE COURT: Give me about five minutes. Anybody else need to take a little ---

MR. PETRANO: Thank you, Judge, I do.

THE COURT: All right.

THE COURT: And can see y'all up here for just a second.

MS. SHURLING: Sure.

(Whereupon, a bench conference was held off the record.)

(The Court was in recess.)

THE COURT: Are y'all ready?

MS. SHURLING: I am, thank you.

THE COURT: All right.

DIRECT EXAMINATION CONTINUES

BY MS. SHURLING:

Q I believe you testified earlier that the theory that Moe (phonetic) Sanders was the shooter was the cornerstone of your defense?

A That was a very very important part of it, yes.

Q Okay. Now, we've been talking about the closing argument on page 238.

A 1238?

Q I mean 1238, pardon me. If you go back a page to 1232 -- pardon me, 1237, take a look at the Solicitor's remarks from lines 18 through 21. Would you publish that, please?

THE COURT: This is Johnny Gasser?

MS. SHURLING: It is indeed, Your Honor.

THE COURT: Okay, go ahead.

A Johnny Gasser says (reading): Ladies and gentlemen, the idea or the premise that Moe Sanders is the shooter is not corroborated by any evidence. In fact, all of the evidence contradicts all of it. First you've got three eyewitnesses ---

Q You can stop.

A Okay.

Q Did you consider moving for a mistrial based on the closing argument that I just asked you to publish?

A No.

Q Did Johnny Gasser argue to keep out the testimony of all of your witnesses designed to demonstrate Moe Sanders' guilt?

A No.

Q Pardon me?

A No. Oh, oh, you mean the third party liability ---

Q Yes.

A --- issue that started, yeah, yeah.

Q Okay. So Johnny Gasser successfully argued for and prevailed in an argument that you should not be allowed to produce any of your evidence that Maurice Sanders was the shooter, correct?

A No, not any evidence now because Dushun Staten's statement was in evidence wherein he stated that he was the shooter.

Q Well ---

A I think Brandon McCants stated that he was the shooter. I think there were at least those two who said he was the shooter.

So, I know what you were thinking but that's not the way it developed at trial.

Q Well, he argued against your desire to introduce the three gentlemen to whom Maurice Sanders had allegedly confessed, correct?

A Yeah.

Q And he argued against the pivotal testimony of Michelle Buff?

A Yes but he did so on all three with respect to the argument of third party liability based on hearsay. Now, he did not try to nor did he succeed in keeping out direct testimony that Moe Sanders was the shooter.

Q And my question is, did you consider arguing that it

was improper for the Solicitor to be allowed to argue to the jury that there was no corroboration of the fact that Moe Sanders was the shooter when he had in fact sought to and succeeded in keeping out the majority of your evidence that Maurice Sanders was the shooter.

A That would have been a speechless argument.

Q Then we'll let the record speak for itself on that. Let's go to ---

A Well, let's ---

Q --- 1208.

THE COURT: Well, Mr. Taylor, you had something else you want to say ---

THE WITNESS: Yes, Your Honor.

THE COURT: I'll give you a chance to say it.

THE WITNESS: If we're going to nitpick a sentence or two out of this transcript, I would ask the entire transcript be put in so the Court can view all of it.

THE COURT: Thank you very much. I think it's already in.

THE WITNESS: All right, sir.

THE COURT: I appreciate the opportunity to read the whole transcript.

THE WITNESS: I know, I appreciated having to

read it again. I didn't want to go through this painful thing at all but...

THE COURT: All right, Ms. Shurling.

Q On page 1208 at lines 19 through 21, do you recall Johnny Gasser submitting that Tony Kennedy was the most credible witness they had heard in three days of testimony?

A Are you saying did he say that in his argument to the jury?

Q Yes, sir?

A On page 1209?

Q Yes, 1208?

A 1208.

Q 19 through 21.

A Yeah.

Q And of course, he follows up with, the most and you're going to have to be the judges of that?

A That's right.

Q Okay. Did you consider objecting to that closing argument as an improper effort to vouch for the credibility of Tony Kennedy by the Prosecutor?

A No. I've argued that every day of my life in criminal cases, submitting that this witness is more credible than that is what the case is all about. And as long as he doesn't say, I believe the he did

this or he did that, that's improper.

Q Okay. Let me ask you to take a look at one more thing. Turn to page 1242.

(Pause.)

MS. SHURLING: One moment, Your Honor.

(Pause.)

Q At lines 11 through 14, do you recall Mr. Gasser vouching as the Prosecutor that eventually there will be 12 jurors sitting in this box plus the number of alternates deciding the guilt or innocence on accessory after the fact in lynching? And then going on at lines 20 through 21, I am prosecuting him but he's not a shooter and he's not a killer?

A That's what he said.

Q Okay. Did you consider objecting to facts not in evidence on that argument?

THE COURT: This was in open or closing?

MS. SHURLING: Closing.

THE COURT: Closing argument.

A No.

Q Okay.

MS. SHURLING: A moment's indulgence, Your Honor.

THE COURT: Yes, ma'am.

(Pause.)

MS. SHURLING: No further questions for Mr. Taylor at this time.

THE COURT: All right. Mr. Petrano.

MR. PETRANO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PETRANO:

Q Mr. Taylor, I'm going to go a little out of order if that's all right with you. I'm going to jump back to page 1238 and that's the closing argument. You've got that open in front of you?

A Yes, sir.

Q Is it readily apparent via the dry record, the non-verbal record, who the -- using the air quote sign here for the record, who "they" is?

A No, it's not.

Q And does -- in your experience, does Mr. Gasser have a talent for using verbal inflection to spin an argument?

A Yes.

Q And would that read different in a dry record?

A Yes.

Q And would ---

A He -- go ahead.

Q When you there -- when you heard this argument from Mr. Gasser in front of everybody with the